

Governing Body

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Institutional Section

INS

FOURTH ITEM ON THE AGENDA

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on Freedom of Association****389th Report of the Committee
on Freedom of Association***Contents*

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Introduction

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 6, 7 and 14 June 2019 under the chairmanship of Professor Evance Kalula.
2. The following members participated in the meeting: Ms Valérie Berset Bircher (Switzerland), Mr Aniefiok Etim Essah (Nigeria), Mr Aurelio Linero Mendoza (Panama), Ms Nthabiseng Lelisa (Lesotho), Mr Takanobu Teramoto (Japan); Employers' group Vice-Chairperson, Mr Alberto Echavarría and members, Mr Thomas Milton Mackall, Mr Juan Mailhos, Mr Hiroyuki Matsui and Ms Jacqueline Mugo; Workers' group Vice-Chairperson, Mr Yves Veyrier (substituting for Ms Catelene Passchier), and members Ms Amanda Brown, Mr Gerardo Martínez, Mr Magnus, Mr Norddahl, and Mr Richard Wagstaff. The members of Argentinian, Colombian and Panamanian nationalities were not present during the examination of the cases relating to Argentina (Case No. 3115), to Colombia (Cases Nos 2761, 2830 and 3074) and to Panama (Case No. 3317).

* * *

3. Currently, there are **160** cases before the Committee in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined **20** cases on the merits, reaching definitive conclusions in **10** cases (7 definitive reports and 3 reports in which the Committee requested to be kept informed of developments) and interim conclusions in **10** cases; the remaining cases were adjourned for the reasons set out in the following paragraphs. The Committee recalls that it issues "definitive reports" when it determines that the matters do not call for further examination by the Committee beyond its recommendations (which may include follow-up by government at national level) and the case is effectively closed for the Committee, "interim" reports where it requires further information from the parties to the complaint and "reports in which it requests to be kept informed of developments" in order to examine later the follow-up given to its recommendations.

Examination of cases

4. The Committee appreciates the efforts made by governments to provide their observations on time for their examination at the Committee's meeting. This effective cooperation with its procedures has continued to improve the efficiency of the Committee's work and enabled it to carry out its examination in the fullest knowledge of the circumstances in question. The Committee would therefore once again remind governments to send information relating to cases in paragraph 6, and any additional observations in relation to cases in paragraph 8, as soon as possible to enable their treatment in the most effective manner. Communications received after **30 September 2019** will not be able to be taken into account when the Committee examines the case at its next session.

Serious and urgent cases which the Committee draws to the special attention of the Governing Body

5. The Committee considers it necessary to draw the special attention of the Governing Body to Cases Nos 2508 (Iran, Islamic Republic of), 2761 and 3074 (Colombia) because of the extreme seriousness and urgency of the matters dealt with therein.

Urgent appeals: Delays in replies

6. As regards Cases Nos 3076 (Maldives), 3081 (Liberia), 3113 (Somalia) and 3269 (Afghanistan) the Committee observes that, despite the time which has elapsed since the submission of the complaints or the issuance of its recommendations on at least two occasions, it has not received the observations of the governments. The Committee draws the attention of the governments in question to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of these cases if their observations or information have not been received in due time. The Committee accordingly requests these governments to transmit or complete their observations or information as a matter of urgency.

Observations requested from governments

7. The Committee is still awaiting observations or information from the governments concerned in the following cases: 3336 (Colombia), 3344 (Brazil), 3348 (Canada) and 3349 (El Salvador). If these observations are not received by its next meeting, the Committee will be obliged to issue an urgent appeal in these cases.

Partial information received from governments

8. In Cases Nos 2177 and 2183 (Japan), 2265 (Switzerland), 2318 (Cambodia), 2609 and 2967 (Guatemala), 3023 (Switzerland), 3042 (Guatemala), 3067 (Democratic Republic of the Congo), 3089 (Guatemala), 3139 (Guatemala), 3141 (Argentina), 3148 (Ecuador), 3161 (El Salvador), 3178 (Bolivarian Republic of Venezuela), 3185 (Philippines), 3192 (Argentina), 3215 (El Salvador), 3219 (Brazil), 3221 (Guatemala), 3225 and 3232 (Argentina), 3242 (Paraguay), 3251 and 3252 (Guatemala), 3271 (Cuba), 3277 (Bolivarian Republic of Venezuela), 3279 (Ecuador), 3281 and 3282 (Colombia), 3300 (Paraguay), 3313 (Russian Federation), 3318 (El Salvador), 3323 (Romania), 3326 (Guatemala), 3328 (Panama), 3331 (Argentina), 3332 and 3335 (Dominican Republic) and 3337 (Jordan), the governments have sent partial information on the allegations made. The Committee requests all these governments to send the remaining information without delay so that it can examine these cases in full knowledge of the facts.

Observations received from governments

9. As regards Cases Nos 2869 (Guatemala), 2923 (El Salvador), 3027 (Colombia), 3062 (Guatemala), 3091 (Colombia), 3119 (Philippines), 3133 (Colombia), 3135 (Honduras), 3149 and 3157 (Colombia), 3179 (Guatemala), 3193, 3197, 3199 and 3200 (Peru), 3203 (Bangladesh), 3207 (Mexico), 3208 (Colombia), 3210 (Algeria), 3211 (Costa Rica), 3213, 3216, 3217, 3218 and 3223 (Colombia), 3224 (Peru), 3225 (Argentina), 3228 (Peru), 3230 (Colombia), 3233 (Argentina), 3234 (Colombia), 3239 (Peru), 3243 (Costa Rica), 3245 (Peru), 3259 (Brazil), 3260 (Colombia), 3261 (Luxembourg), 3263 (Bangladesh), 3265 (Peru), 3266 (Guatemala), 3267 (Peru), 3280 (Colombia), 3291 (Mexico), 3292 (Costa Rica), 3294 (Argentina), 3295 (Colombia), 3298 (Chile), 3302 (Argentina), 3303 (Guatemala), 3306 (Peru), 3307 (Paraguay), 3308 (Argentina), 3309 (Colombia), 3310 (Peru), 3311 (Argentina), 3312 (Costa Rica), 3314 (Zimbabwe), 3315 (Argentina), 3316 (Colombia), 3319 (Panama), 3320 (Argentina), 3321 (El Salvador), 3322 (Peru), 3324 (Argentina), 3327 (Brazil), 3329 (Colombia), 3330 (El Salvador), 3333 (Colombia), 3334 (Malaysia), 3338 (Argentina), 3339 (Zimbabwe), 3340 (Panama), 3341 (Ukraine), 3342 (Peru), 3343 (Myanmar), 3345 (Poland), 3346 (Netherlands) and 3347 (Ecuador) the

Committee has received the governments' observations and intends to examine the substance of these cases as swiftly as possible.

Withdrawal of a complaint

10. With respect to Case No. 3254 (Colombia – active), the Committee notes with satisfaction that, in the framework of the Special Committee for the Handling of Conflicts referred to the ILO, the parties concerned signed an agreement on 16 August 2018 in which the complainant organization agreed to withdraw the mentioned complaint. In these circumstances, the Committee decides to close this case.

New cases

11. The Committee adjourned until its next meeting the examination of the following new cases which it has received since its last meeting: Cases Nos 3350 (El Salvador), 3351 (Paraguay), 3352 (Costa Rica), 3353 (Ireland) and 3354 (Costa Rica) since it is awaiting information and observations from the governments concerned. All these cases relate to complaints submitted since the last meeting of the Committee.

Article 24 representations

12. The Committee has received the governments' observations with respect to the article 24 representations that were referred to it: Argentina (3165), Brazil (3264), Costa Rica (3241) and France (3270), and intends to examine them as swiftly as possible. The Committee has also taken note of the referral of the freedom of association aspects of the article 24 representation concerning Turkey and is awaiting the Government's full reply.

Transmission of cases to the Committee of Experts

13. The Committee draws the legislative aspects of Cases Nos 2318 (Cambodia), 3128 (Zimbabwe), 3284 (El Salvador) and 3317 (Panama) as a result of the ratification of Conventions Nos 87 and 98, to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

Cases in follow-up

14. The Committee examined **14** cases in paragraphs **15** to **109** concerning the follow-up given to its recommendations and concluded its examination with respect to and therefore closed, **3** cases: 2750 (France), 2752 (Montenegro) and 2789 (Turkey).

Case No. 2882 (*Bahrain*)

15. The Committee last examined this case, in which the complainants alleged serious violations of freedom of association, including massive dismissals of trade union leaders and members following their participation in a strike, threats to the personal safety of trade union leaders, arrest, harassment, prosecution and intimidation, as well as interference in trade union affairs, at its October 2017 meeting [see 383rd Report, paras 17–28]. On that occasion, the Committee once again requested the Government to provide copies of the judgments handed down in the cases of Abu Dheeb and Jalila Al-Salman, as well as any information on their appeals to the Court of Cassation or their request for rehabilitation. It further requested the

Government to report any progress made with regard to the possibility of ratifying the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and to hold consultations with the social partners concerned without delay in order to bring the Trade Union Act (TUA) into conformity with freedom of association principles. Finally, the Committee requested the Government to provide an update as to the situation of trade unions in enterprises where an investigation was ongoing in relation to allegations of anti-union discrimination and interference.

16. In its communication dated 25 September 2018, the Government provides information on the current economic and labour situation in the country and emphasizes that, since 2011, the year of the complaint, the situation has returned to normal, with 99 per cent of the cases concerning dismissals settled through dialogue and tripartite cooperation between the parties concerned. The Government adds that, in recent times, positive relations have developed between trade unions and company management as a result of the efforts and action taken by the Ministry of Labour and Social Development to reconcile the parties.
17. In relation to the detention of Abu Dheeb and Jalila Al-Salman, the Government reiterates that they both obtained a fair trial, were able to appoint a lawyer, all judicial guarantees were available to them, and the judgments originally handed down against them were later modified by the Civil Court of Appeal. Both individuals have now served their sentences, enjoy full rights and may submit an application for rehabilitation in accordance with the rules and laws established. The Government also recalls that the Bahrain Teachers Association (BTA) is a former civil society organization established in 2001 but dissolved in 2011, it is not considered to be a trade union and no longer has any legal status under Bahraini law.
18. Concerning the possibility of ratifying Conventions Nos 87 and 98, the Government indicates that even without ratifying the Conventions it already has a progressive system based on the principle of labour pluralism as provided for in the TUA, protection against anti-union discrimination and the right of workers to strike to defend their interests, as well as other guarantees provided for in the Labour Code for the private sector, including collective dispute resolution and collective agreement measures.
19. With regard to the requested amendments of the TUA, the Government indicates that the prohibition of strikes in specific economic sectors is a prerogative of the Government who takes economic interests into account in order to protect the society while providing other safeguards to protect the interests of the labour force, and that despite numerous tripartite and bipartite meetings, neither social partners nor other parties concerned addressed this issue at the internal level. The Government therefore believes that such prohibition does not affect freedom of association in the country.
20. Finally, the Government expresses its hope that the Committee will close this case since all the allegations have been settled and the parties concerned have not submitted new information or observations with regard to the substance of the complaint. The Government also expresses its willingness to cooperate with the social partners to study any proposals that may be presented in the context of national tripartite dialogue.
21. *The Committee takes due note of the information submitted by the Government on the current economic and labour situation in Bahrain, in particular that the majority of dismissals have been settled through dialogue and cooperation and that positive relations have developed between trade unions and the management of enterprises, as a result of the Government's efforts and action taken to reconcile the parties. The Committee understands that this also refers to the enterprises in which anti-union discrimination was previously alleged in the present case and trusts that the Government's efforts will prevent any future anti-union*

practices and will contribute to maintaining harmonious labour relations in those enterprises.

22. *The Committee deeply regrets that, despite having been requested to do so on a number of occasions, the Government once again failed to provide copies of the judgments condemning Abu Dheeb and Jalila Al-Salman and simply reiterates information provided previously with regard to their trial. In these circumstances, the Committee is obliged to recall once again that the detention of trade unionists for reasons connected with their activities in defence of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular [see **Compilation of decisions and principles of the Freedom of Association Committee**, sixth edition, 2018, para. 123]. While further noting the Government's affirmation that Abu Dheeb and Jalila Al-Salman now enjoy full rights, the Committee also observes that the BTA, after having been dissolved in 2011, no longer has any legal status under Bahraini law and understands from this information that the trade unionists can thus not fully enjoy their trade union rights. In view of the above, the Committee expects the Government to take the necessary measures to ensure that, should the BTA wish to be re-established under the applicable legislation, it will not be faced with any administrative obstacles and that Abu Dheeb and Jalila Al-Salman will be able to freely exercise their human rights and trade union rights in conformity with freedom of association principles. The Committee invites both the Government and the complainants to provide updated information as to the current status of the BTA.*
23. *With regard to the possibility of ratifying Conventions Nos 87 and 98, the Committee notes that the Government enumerates a number of trade union rights recognized at the national level but does not indicate whether any concrete steps have been taken towards actual ratification. The Committee trusts that, in line with its commitment made in the 2012 tripartite agreement, the Government will progressively work on the possibility of ratifying these Conventions.*
24. *The Committee further notes with regret that, despite its repeated requests to amend the TUA and the Prime Minister's Decision No. 62 of 2006, in order to bring them into conformity with freedom of association principles, in particular in terms of the list of services in which strikes can be restricted or prohibited and the manner in which such services are determined, the Government only reiterates information provided previously and asserts that prohibition of strikes in specific economic sectors is a prerogative of governments and that the social partners have not raised this issue at the national level. The Committee recalls in this regard that the right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population). To determine situations in which a strike could be prohibited, the criterion which has to be established is the existence of a clear and imminent threat to the life, personal safety or health of the whole or part of the population [see **Compilation**, op. cit., paras 830 and 836]. Further recalling that it has been asking for legislative amendments to this effect for several years, the Committee requests the Government to continue to engage with the social partners with a view to bringing the TUA into conformity with the above, fully taking into account the Committee's previous comments.*

Case No. 3121 (Cambodia)

25. *The Committee last examined this case, in which the complainant organization denounced the refusal to register a trade union at a garment factory, acts of anti-union discrimination following a strike, the use of military force on striking workers and excessive legislative requirements for the determination and election of union leadership, at its October 2017*

meeting [see 383rd Report, paras 105–118, approved by the Governing Body at its 331st Session]. On that occasion, the Committee made the following recommendations:

- (a) The Committee welcomes the registration of the factory trade union and requests the Government to confirm that the concerned workers were duly informed of the union's successful registration and that they can exercise legitimate union activities freely and without any interference. The Committee expects that the adoption of the new Act on Trade Unions, 2016 and the Prakas No. 249 on Registration of Trade Unions and Employers' Associations will contribute to ensuring a simple, objective, transparent and rapid procedure for trade union registration in practice and will prevent the formulation of additional administrative obstacles. The Committee invites the Government to provide a copy of the Prakas No. 249 and refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations.
- (b) The Committee urges the Government once again to take the necessary measures to review section 269 of the Labour Act and section 20 of the new Act on Trade Unions, in consultation with the social partners, in order to ensure that the law does not infringe workers' right to elect their officers freely. The Committee requests the Government once again to take all necessary measures to ensure in the future that the notification requirement in section 3 of the Prakas No. 305 does not amount to a requirement for authorization by the employer to create a trade union or is not otherwise misused to halt trade union formation. The Committee refers the legislative aspects of this case to the Committee of Experts.
- (c) The Committee urges the Government to clarify whether the specific allegations of killings, physical injury and arrest of protesting workers following the January 2014 demonstrations are being investigated in the context of the mentioned fact-finding committees and if so, to provide the specific findings of the committees in this regard. Should the ongoing investigations not cover this issue, the Committee urges the Government to institute an independent inquiry into the serious allegations without delay and to inform it of the outcome and the measures taken as a result.
- (d) The Committee requests the Government to keep it informed of any specific measures taken or envisaged to address the allegations of widespread anti-union discrimination and, in particular, to ensure that trade union members and leaders are not subjected to anti-union discrimination, including dismissals, transfers and other acts prejudicial to the workers, or to false criminal charges based on their trade union membership or activities, and that any complaints of anti-union discrimination are examined by prompt and impartial procedures.
- (e) The Committee once again draws the Governing Body's attention to the serious and urgent nature of certain aspects of this case.

26. In its communication dated 1 October 2018, the Government indicates that following the adoption of the 2016 Law on Trade Unions (LTU), the registration procedure has been simplified and reformed and that Prakas No. 249 on Registration of Trade Unions and Employers' Associations, 2016, ensures a simple, objective, transparent and rapid procedure for trade union registration. In particular, it contains detailed information and assistance for newly established trade unions on how to obtain registration and provides a list of required documents and templates as samples and guidelines. The Government clarifies that the requirements listed in the Prakas should not be considered as additional administrative obstacles or a burden in the exercise of the right to freedom of association since by providing certain information, such as social security numbers and employment book numbers, the Ministry of Labour and Vocational Training (MLVT) can ensure that each worker is properly registered with the Ministry and the National Social Security Funds, so as to provide workers with full protection under the labour law. The Government also states that the simplification and reform under the LTU have resulted in an increase in the number of trade union registrations in 2017, both for local unions and for workers' federations and confederations.

27. Concerning the right of workers to elect their officials freely, the Government informs that section 269 of the Labour Act was abrogated and that section 20 of the LTU provides for

new, more favourable conditions to be elected as a union's leader: the age of eligible candidates was reduced from 25 to 18 years of age, the required expertise of at least one year of work was removed and the requirement to produce a criminal record was replaced with a simple clarification from the candidate.

28. With regard to section 3 of Prakas No. 305, the Government clarifies that the provision does not amount to an authorization from the employer to create a union but simply requires the union to notify the employer about the candidates to be elected in order to obtain, after the election, 45 days of special protection. Furthermore, Prakas No. 305 was abrogated and replaced by Prakas No. 303 in 2018 in accordance with the LTU. The Government further indicates in this regard that section 5 of the LTU stipulates that any formation of a worker union or an employer association, which includes both employers and workers therein shall be prohibited and that section 63 provides a list of prohibited unfair labour practices by the employer, which include, among others, interference in any way with the worker in exercising their right to self-organization of a worker union, imposition of a working condition or an employment renewal condition that requires a worker not to join a worker union or to withdraw from the worker union to which he or she belongs, and contracting out services or functions being performed by worker union members when such operation may interfere in the exercise of the rights of workers to self-organization of a worker union.
29. Concerning the alleged widespread practice of anti-union discrimination, the Government refers to the adoption of the LTU and to the above-mentioned section 63 to affirm that it is committed to combating all forms of union discrimination which is contrary to both the country's Constitution and the ratified international labour Conventions. It indicates that the LTU stipulates special protection to union leaders, as well as unelected candidates and founding members, during the establishment of a trade union and during, before and after the election.
30. As to the alleged use of force on protesting workers during the January 2014 demonstrations, the Government reiterates that Cambodia is a country based on the rule of law and that whoever commits an offence shall be held responsible before the law. The incidents of 2014 are currently before the Court, as an independent body separate from the Government, and the Government will thus report once the result is produced by the Court.
31. Finally, the Government reaffirms that there is no intimidation and interference in the exercise of freedom of association in the country and that the MLVT has always relentlessly addressed issues that alter freedom of association in close cooperation with all stakeholders. The Government, therefore, requests the Committee to withdraw this case from the list of pending cases.
32. *With regard to the procedure for registering trade unions (recommendation (a)), the Committee notes the Government's indication that the registration procedure has been reformed and simplified through the adoption of the Law on Trade Unions (LTU) and Prakas No. 249, as a result of which trade union registration at local, federation and confederation levels has increased considerably in 2017, and that Prakas No. 249 aims at facilitating registration and ensuring full protection of workers by providing detailed information and a list of required documents and templates that should, however, not be considered as additional administrative obstacles. As to its request to review section 269 of the Labour Act and section 20 of the LTU in order to ensure that the law does not infringe workers' rights to elect their officers freely (recommendation (b)), the Committee notes the Government's indication that with the adoption of the LTU, the eligibility criteria for union officials were simplified: the age of eligible candidates was reduced from 25 to 18, the required expertise of at least one year of work was removed, and the requirement to produce a criminal record was replaced with a simple clarification from the candidate. The Government also indicates that Prakas No. 305 was abrogated and replaced by Prakas No. 303 and affirms that it is*

not applied in a manner that would subject trade union formation to an authorization by the employer.

33. While taking due note of the information provided, the Committee recalls that it had previously decided not to pursue the examination of the legislative aspects of the complaint concerning registration of trade unions (recommendation (a)), and excessive legislative requirements for the determination and election of union leadership (recommendation (b)), as it had referred these aspects to the Committee of Experts on the Application of Conventions and Recommendations. The Committee observes that, in its latest comments, the Committee of Experts did indeed address these issues and invites the Government to provide any further relevant information on the pending matters to the Committee of Experts.
34. The Committee further notes that the Government did not confirm whether the concerned workers from the Cambodian Alliance of Trade Unions (CATU) were duly informed of the union's successful registration at the garment factory back in April 2015 and whether they can freely exercise legitimate trade union activities (part of recommendation (a)). Nevertheless, in the absence of any information to the contrary from the complainant and in view of the Government's commitment to address any issues limiting freedom of association, the Committee trusts that this was indeed the case and that the trade union can, at present, exercise legitimate union activities freely and without any interference.
35. Regarding the alleged use of military force on striking workers in January 2014 (recommendation (c)), the Committee recalls from its previous examination of the case that three fact-finding committees had been set up following the incidents but that it was unclear from the information provided by the Government whether the specific allegations of killings, physical injury and arrest of protesting workers denounced by the complainant were also being investigated in the context of these committees. In this regard, the Committee notes the Government's general statement that the incidents of January 2014 are before the Court and that it will report on the outcome once it receives the Court's judgments. While taking due note of this information, the Committee regrets that more than five years after the alleged incidents, the Government has not provided any concrete information on the outcome of the investigations into the serious allegations of killings, physical violence and arrests of protesting workers and that the Government once again failed to clarify whether these serious allegations are indeed being investigated or addressed by the judicial authorities or whether the pending judicial cases refer to other matters. In these circumstances, the Committee recalls once again that in cases in which the dispersal of public meetings by the police has involved loss of life or serious injury, the Committee has attached special importance to the circumstances being fully investigated immediately through an independent inquiry and to a regular legal procedure being followed to determine the justification for the action taken by the police and to determine responsibilities [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, op. cit., para. 104]. The Committee requests the Government to provide concrete information on the results of the fact-finding committees investigating the allegations of killings, physical violence and arrests of protesting workers and expects any pending court proceedings looking into these matters to be concluded without delay and the concerned workers fully compensated for any damage suffered. The Committee expects the Government to be able to report progress on this matter without delay.
36. The Committee further notes that in a communication dated 5 April 2019, the Government informs that six trade union leaders who led the general strike in December 2013 were sentenced to a suspended two-and-a-half year imprisonment and ordered to jointly pay 35 million Cambodian Riels (US\$8,661) as compensation to the plaintiffs for instigating intentional violence with aggravating circumstances, instigating acts of causing damage with threats and obstructing road traffic. The Government reiterates that in line with Convention No. 87, violent actions during strikes are not protected by national legislation

and indicates that the cases of the six trade unionists are currently pending before the Court of Appeal. The Committee recalls in this regard that it had previously expressed concern at the acts of violence on both sides during the December 2013 and January 2014 demonstrations and emphasized that while the principles of freedom of association do not protect abuses consisting of criminal acts while exercising the right to strike [see **Compilation**, op. cit., para. 965], freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed [see **Compilation**, op. cit., para. 82]. The Committee requests the Government to provide information on the outcome of the appeal proceedings concerning the six trade unionists, including a copy of the judgment once rendered, and trusts that no trade unionist will be sanctioned for having exercised their trade union activities.

37. With regard to the alleged widespread practice of anti-union discrimination in the country (recommendation (d)), the Committee notes the Government's commitment to combat all forms of anti-union discrimination, including through the adoption of the LTU and the protection it offers, and its affirmation that there is no intimidation or interference in the exercise of freedom of association in Cambodia. Recalling, however, the alarming statistical information previously provided by the complainant to corroborate this allegation, the Committee wishes to remind the Government that anti-union discrimination is one of the most serious violations of freedom of association, as it may jeopardize the very existence of trade unions. A free and independent trade union movement can only develop in a climate free of violence, threats and pressure, and it is for the Government to guarantee that trade union rights can develop normally [see **Compilation**, op. cit., paras 1072 and 87]. In view of the above, the Committee trusts that, in line with its commitment, the Government will continue to take measures to create and maintain an environment in which freedom of association rights can develop freely without any interference, and where allegations of anti-union discrimination are speedily addressed and remedied by the appropriate authorities.

Case No. 2750 (France)

38. The Committee last examined this case at its March 2016 meeting [see 377th Report, paras 27 to 34]. On that occasion, following the complaint lodged by the Confédération générale du travail-Force ouvrière (CGT-FO) concerning the Act of 20 August 2008 to renew social democracy and to reform working hours and its implementing regulations, the Committee immediately invited the Government to hold discussions with the social partners on the revision of the legislation in order to guarantee trade union organizations the right to freely choose their representatives.
39. The Committee notes that, in a communication dated 27 August 2018, the Government informs that the legal provisions relating to the appointment of trade union delegates have evolved with a view to complementing the flexible interpretation given by the Court of Cassation to the relevant provisions of the law of 20 August 2008. The Government indicates that Article 6 of Act No. 2018-217 of 29 March 2018 provides for an important additional exemption from the requirement laid down by the Act of 20 August 2008 that the trade union delegate must be chosen by his organization from among candidates who have personally obtained at least 10 per cent of the votes cast in occupational elections. The Government specifies that under this reform, a representative trade union organization may now freely appoint a trade union delegate from among its candidates who have not reached the mentioned 10 per cent threshold in the following cases: (i) when none of the candidates nominated by the trade union organization for occupational elections has received at least 10 per cent of the votes cast in a personal capacity; (ii) when no candidate having obtained at least 10 per cent of the votes cast in occupational elections is left in the company or establishment; and (iii) when all the elected representatives who have obtained at least 10 per cent of the votes cast waive in writing their right to be appointed as trade union delegates.

The Government stresses that it follows from the above that representative trade union organizations would never find themselves in a situation in which they could not choose their representative. *The Committee notes with satisfaction that the reform of the legislation on the appointment of trade union delegates contributes, in conformity with the principles of freedom of association, to the preservation of the right of trade union organizations to freely choose their trade union delegates. In these circumstances, the Committee considers that this case does not call for further examination.*

Case No. 2807 (Islamic Republic of Iran)

40. The Committee last examined this case at its June 2016 meeting [see 378th Report, paras 56–60]. On that occasion, it urged the Government to take all the necessary measures to effectively and rapidly move forward the labour law reform process with a view to bringing the law and practice into conformity with the principles of freedom of association, in particular to allow for trade union pluralism at the enterprise, sector and national levels.
41. The Government sent follow-up information in a communication dated 1 October 2018. With regard to the labour law reform, the Government indicates that in order to accommodate repeated requests of workers’ and employers’ organizations, it has agreed to take back the bill on the amendment of the Labour Law from the Parliament for further review. It further indicates that new drafts of the relevant by-laws were returned to the Supreme Labour Council for further review and remain pending there. The Government adds that a draft law on the amendment of the Act on the Establishment of Islamic Labour Councils was drawn up by MPs in consultation with the National Confederation of the Islamic Labour Councils and is currently under examination in the Social Committee of the Parliament.
42. The Government further indicates that trade associations in the Islamic Republic of Iran are governed by two different laws: Chapter 6 of the 1990 Labour Law entitled “Workers’ and Employers’ Organizations” and the Act on the Activities of Political and Professional Parties, Groups and Associations, Islamic Associations or Recognized Religious Minorities (1981). The Government adds that, currently, various trade organizations are active within the framework of the mentioned laws and the lawmaker has adopted two separate laws for the activity of trade organizations in order to avoid monopoly in applying either law and to underscore the importance of freedom of association while providing the possibility of pluralism for trade organizations. It further adds that workers of a business unit are entitled to establish one of the three types of workers’ organizations (Islamic labour council, workers’ trade association or workers’ representative) at the unit. Since the Government has a policy of respecting pluralism and observing the right of workers to freely select the type of organization that would represent them, and it aims at benefiting from the capacity of all workers’ organizations in relevant decision-making bodies, every year, the Confederation for Coordinating Islamic Labour Councils, the Confederation of Workers’ Trade Associations and the Confederation of Workers’ Representatives of the Islamic Republic of Iran elect the main and substitute members of the workers’ delegation that would participate at the International Labour Conference. The Government concludes that it does not spare any effort to improve workers’ livelihood in collaboration with social partners; that it is committed to compliance with the principles of freedom of association and strengthening social dialogue and will seize all opportunities for achieving its objectives through amendment of labour law provisions.
43. *The Committee notes with regret that once again the Government is not in a position to report any progress in the labour law reform process. The Committee also notes the Government’s indications with regard to the current legal framework. It notes that while the Government emphasizes its commitment to workers’ organization pluralism, it also indicates that workers at a business unit are entitled to establish one of the three types of organizations*

indicated in Chapter 6 of the 1990 Labour Law. The Committee recalls in this regard, that the right of workers to establish organizations of their own choosing implies, in particular, the effective possibility to create – if the workers so choose – more than one workers' organization per enterprise [See **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 479]. The Committee understands that trade union pluralism is restricted at the work unit level and at the national level, where the confederations of Islamic labour councils, of trade associations and of workers' representatives referred to by the Government are the only groups that can take part in decision-making bodies and elect workers' delegates to participate in the International Labour Conference. The Committee therefore once again expresses its firm expectation that the Government will take all the necessary measures to effectively expedite the labour law reform process with a view to enabling all Iranian workers to establish and join organizations of their own choosing at the work unit, sector and national levels. It requests the Government to inform it of any developments in this regard and to send copies of the latest legislative drafts.

Case No. 2752 (Montenegro)

44. The Committee last examined this case, which concerns allegations of refusal by the management of a state-owned enterprise¹ to recognize the representative status of a trade union, as well as the dismissal of its officers and harassment of its members, at its October 2016 meeting [see 380th Report, approved by the Governing Body at its 328th Session, paras 54–59]. On that occasion, the Committee once again urged the Government to institute an independent investigation into the allegations of repeated acts of anti-union discrimination committed by the company since 2008, including the alleged anti-union dismissals of Mr Pajovic in 2012 and Mr Janjic in 2014, and to keep it informed on the outcome of such inquiry, as well as on the outcome of the proceedings regarding Mr Pajovic's second dismissal. The Committee also requested the Government to carry out an independent investigation into the allegations of anti-union harassment of workers and provide detailed information on its outcome.
45. The Government provides its observations in a communication dated 28 June 2017. Regarding the Committee's request to institute an independent investigation into the allegations of repeated acts of anti-union discrimination committed by the enterprise, the Government indicates that national legislation does not offer a possibility of establishing an independent body that would have the competence for conducting an investigation into the alleged acts, given that the legal system provides for judicial protection which the complainants used in this concrete case. The Government adds that the Labour Inspectorate is competent to monitor the application of laws and others regulations on work, employment protection and health at work, collective agreements and labour contracts, however, since judicial proceedings have been initiated in the present case, the Labour Inspectorate has no competence.
46. As to the judicial proceedings concerning Mr Pajovic's second dismissal, the Government informs that, in a decision dated 1 July 2016, the Basic Court in Podgorica annulled as unlawful the 2012 enterprise decision terminating Mr Pajovic's employment, ordering his reinstatement in a position corresponding to his professional background, education level, and occupation, and obliging the employer to pay compensation of a total of €19,208.85 for reduced salary, unpaid earnings, litigation proceedings and the related unpaid interest. By a decision dated 16 December 2016, the High Court in Podgorica confirmed the first instance court's judgment declaring Mr Pajovic's dismissal unlawful and ordering his reinstatement but reduced the amount awarded bringing the compensation to a total of €15,781.45. The

¹ The Radio and Television of Montenegro.

Government further informs that the employer appealed this judgment and that, considering that the dispute between Mr Pajovic and the enterprise is within the jurisdiction of the court, the Ministry of Labour and Social Welfare has no jurisdiction to influence the proceedings.

47. Concerning the case of Mr Janjic, who was declared redundant in 2014, the Government indicates that the main hearing was held on 8 February 2017 and that, according to the procedural judge, the decision would be made within the legal deadline and delivered to the parties in accordance with the delivery rules contained in the Civil Procedure Act.
48. *The Committee takes note of the information provided by the Government and notes, in particular, that in July and December 2016, respectively, the Basic Court and the High Court in Podgorica both declared Mr Pajovic's dismissal unlawful and ordered his reinstatement with compensation but the enterprise appealed this decision, and that the dismissal of Mr Janjic is currently under examination by the judicial authorities. Noting the advancements made in these two cases, the Committee trusts that the pending judicial proceedings will be concluded without further delay and that, should it be confirmed that the trade unionists were dismissed due to the exercise of legitimate trade union activities, measures will be taken to ensure that they are reinstated without loss of pay and adequately compensated. Further observing that the Government has not provided any information with regard to the allegations of anti-union harassment at the enterprise, the Committee trusts that the Government will take the appropriate measures to ensure that any remaining issues are properly examined by the competent authorities and solved in accordance with the principles of freedom of association. In these circumstances, the Committee considers that this case does not call for further examination.*

Case No. 3140 (Montenegro)

49. The Committee last examined this case, in which the complainant denounced the dismissal of a trade union leader, Ms Obradovic, from her employment in the Aluminium Plant Podgorica (the aluminium company), allegedly due to her exercise of trade union activities and the refusal to let her enter trade union premises after her dismissal, at its October 2018 meeting [see 387th Report, paras 35–41, approved by the Governing Body at its 334th Session]. On that occasion, welcoming the decision of the Supreme Court of Montenegro annulling the judgments of the lower courts and remanding the case of Ms Obradovic to the bankruptcy trustee for consideration, the Committee reiterated its request that the claims of Ms Obradovic be fully reviewed without delay, with a view to ensuring her reinstatement as a primary remedy should the dismissal be found to have been motivated by her trade union activities or, if reinstatement was not possible for objective and compelling reasons, that she be granted adequate compensation. Given that Ms Obradovic still held the function of trade union representative, the Committee expressed its expectation that she would be given reasonable access, without delay, to the workplace and the trade union premises for the exercise of her functions. Finally, noting that the amended Law on Bankruptcy did not appear to address labour rights other than “wages and other income”, the Committee requested the Government to clarify whether the amendments also ensure that the rights of persons engaged in companies undergoing bankruptcy proceedings are covered under the legislation regulating labour rights more generally, including as regards claims of anti-union discrimination, retaliation and unfair dismissal.
50. In its communication dated 2 November 2018, the complainant informs that following the Supreme Court's annulment of the judgments of the Commercial Court and the Appellate Court in June 2018, the case of Ms Obradovic was returned to the bankruptcy administrator for redetermination and Ms Obradovic requested the bankruptcy judge in charge of the case to annul the administrator's illegal decision concerning the termination of her labour contract due to her trade union activities. According to the complainant, the re-examination of the case created an assumption that the Government would finally comply with the Committee's

recommendations; however, in the process of rededecision in the first instance, the bankruptcy administrator made the same decision as previously, disregarding the Committee's recommendations, even though these had been pointed out by Ms Obradovic's lawyer. The complainant therefore requests the Committee to urge the Government to comply with the Committee's earlier recommendations in this case and to protect Ms Obradovic from the anti-union discrimination and long-standing injustice and consequences she has been suffering.

51. In a communication dated 28 February 2019, the Government informs about the developments in the case of Ms Obradovic: (i) in April 2018, the Constitutional Court of Montenegro upheld the constitutional appeal of Ms Obradovic, abolishing the verdict of the Supreme Court from December 2015 and returning the case to that court for re-trial; (ii) in June 2018, the Supreme Court issued a decision abolishing the judgments of the Commercial Court and the Appellate Court and ordered that the action of Ms Obradovic is to be deemed a complaint against the March 2015 decision of the bankruptcy administrator; (iii) on 3 September 2018, the Commercial Court rejected as ungrounded the appeal of Ms Obradovic against the decision of the bankruptcy administrator; (iv) Ms Obradovic lodged an appeal in a timely fashion against that decision but on 10 December 2018, the Appellate Court upheld the decision of the Commercial Court and rejected the appeal as unfounded; (v) according to the Appellate Court, the termination of employment of Ms Obradovic had been done in accordance with the terms of her contract (fixed-term contract extended at the latest until the sale of the company's property, which took place in June 2014) and in line with the Bankruptcy Law and the Labour Law; allegations that it was based on trade union activities did not arise from the case file and no evidence was provided to sustain such allegations; furthermore, Ms Obradovic was not deprived of the right to remedy and could challenge the bankruptcy administrator's decision; and Ms Obradovic's referral to the Committee's recommendations cannot be significant in the proceedings before the court because its decisions are made on the basis of the Constitution, the laws and the ratified and published international treaties; (vi) the court proceedings on the complaint of Ms Obradovic against the action of the bankruptcy administrator were thus validly terminated; and (vii) since the entire property of the bankruptcy debtor (the aluminium company) had been sold to another enterprise, the bankruptcy administrator has no possibility to provide Ms Obradovic with access to trade union premises for trade union activities.
52. The Government further states that the Bankruptcy Law is *lex specialis* that applies in an imperative manner in situations of bankruptcy, that is, a permanent inability to pay or indebtedness. Bankruptcy proceedings are court proceedings conducted by the competent court and the bodies engaged are the bankruptcy judge, the bankruptcy administrator and a board of creditors. A bankruptcy procedure, once initiated, terminates the employment contracts concluded by the debtor with the employees, which means that the employment of all employees is terminated by force of law. However, the bankruptcy administrator, with the consent of the bankruptcy judge, may hire the necessary number of persons for the completion of the commenced business or to carry out the bankruptcy proceedings, as in the case of Ms Obradovic.
53. With regard to the interpretation of section 79(4) of the Bankruptcy Law (now section 29(4)), the Government clarifies that in the 2011 Bankruptcy Law, this provision stipulated that the earnings and wages of persons engaged in bankruptcy proceedings shall be determined by the bankruptcy administrator after obtaining the opinion of the board of creditors, with the consent of the bankruptcy judge. Since this provision had only standardized the issue of earnings during bankruptcy proceedings and did not fully regulate the labour status of employees, legislative amendments were initiated. The Law on Changes and Amendments to the Bankruptcy Law, 2016 amended the relevant provision to regulate the labour status of persons engaged in bankruptcy proceedings by prescribing that when it comes to the level

of earnings, but also other rights based on employment of a person for the completion of commenced business, or in order to carry out bankruptcy proceedings, such rights shall be established by the bankruptcy administrator in accordance with the law governing employment rights. According to the Government, the amendment thus equalled the status of these persons with all employees in Montenegro and rounded off their protection in relation to employment rights.

54. *With regard to the developments in the case concerning Ms Obradovic, the Committee observes from the information and documents submitted by the Government and the complainant that following the Supreme Court's June 2018 annulment of the judgments of the lower courts, the complaint of Ms Obradovic was again reviewed by the Commercial Court and the Appellate Court in September and December 2018, respectively, but both entities again found her complaint unfounded. In particular, the Committee notes that the Appellate Court considered that the termination of her employment had been done in line with the Bankruptcy Law and the Labour Law, as well as in accordance with the terms of her contract (a fixed-term contract extended at the latest until the sale of the company's property, which took place in June 2014) and that the allegations that the termination of her employment contract was based on her exercise of trade union functions was ungrounded, since this did not arise from the case file and no evidence was provided to sustain such allegations. Finally, the Committee notes the Appellate Court's assertion that Ms Obradovic was not deprived of the right to remedy and was able to challenge the bankruptcy administrator's decision. While the outcome of the judicial proceedings at the national level seems to indicate that the termination of employment of Ms Obradovic was not based on her functions as a trade union representative, but rather as a result of her fixed-term contract that came to an end with the sale of the company's property. Recalling that the Committee has emphasized the advisability of giving priority to workers' representatives with regard to their retention in employment in case of reduction of the workforce, to ensure their effective protection [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1157], the Committee considers that such an approach is also relevant with regard to bankruptcy proceedings, especially where the production continues. The Committee trusts that the Government will ensure that any future bankruptcy proceedings are conducted in line with the above.*
55. *As regards access to trade union premises, the Committee regrets that the Government does not provide details as to the measures taken to ensure such access for Ms Obradovic and observes that it is simply stated, in one of the documents submitted, that since the entire property of the aluminium company had been sold to another enterprise, the bankruptcy administrator has no possibility of providing her with access to trade union premises for the exercise of trade union activities. While taking due note of the above, the Committee recalls that workers' representatives should be granted access to all workplaces in the undertaking where such access is necessary to enable them to carry out their representation function [see **Compilation**, op. cit., para. 1591] and expects the Government to take all necessary measures to ensure that Ms Obradovic, for the duration of her role as trade union representative, is given reasonable access to trade union premises for the exercise of her functions.*
56. *Concerning the interpretation of the Bankruptcy Law, the Committee notes the clarification provided by the Government and understands from the information submitted that the Bankruptcy Law is applied as *lex specialis* in situations of bankruptcy, but that following the 2016 amendment, the labour rights of workers engaged for the completion of commenced business or to carry out bankruptcy proceedings are determined by the bankruptcy administrator in line with the relevant labour laws and regulations.*

Case No. 3171 (Myanmar)

57. The Committee last examined this case in which the complainant alleged anti-union practices, including harassment, discrimination and dismissals of trade union members and officials, as well as interference in union activities, denial of access to workplace and attempts to dismantle the Bagan Hotel Union, carried out by the management of the Bagan Hotel River View, at its March 2017 meeting [see 381st Report, paras 59–68]. On that occasion, the Committee requested the Government to keep it informed of the outcome of the tripartite investigation concerning the allegations of discrimination, harassment, and intimidation of union members and officials at the hotel. It further requested the Government to indicate whether the investigation team was also looking into the specific allegations of intimidation after a peaceful demonstration of union and non-union members, and if not, to indicate the steps taken to ensure an investigation into these allegations and ensure an effective remedy, if found to be true. The Committee also expressed its trust that the labour law reform would continue in consultation with the employers' and workers' organizations concerned, with a view to making any necessary amendments, including, as appropriate in respect to the Application of Writs Act so as to ensure the effective protection of workers against anti-union discrimination and interference by providing for swift means of redress, appropriate remedies and sufficiently dissuasive sanctions. Finally, the Committee once again encouraged the Government to avail itself of the technical assistance of the Office in regard of the labour law reform and invited it to give consideration to the ratification of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).
58. In its communications dated 3 March and 16 August 2017, the Government provides the following information on the outcome of the tripartite investigation into the allegations of anti-union discrimination, harassment, and intimidation of union members and officials at the hotel: (a) the Chairperson of the Bagan Hotel River View Union told that the complaint was made because the workers assumed that they were discriminated by the employer even though the employer did not use anti-union practices such as harassment, discrimination or intimidation of union members; (b) the employer representative indicated that the employer recognizes the Bagan Hotel Union as it was formed under the Labour Organization Law (2011) and that all employees are treated equally without any form of discrimination; in addition he also stated that all employees, including members of the workers' organization, are doing their jobs at the hotel peacefully; and (c) the investigation team explained the Labour Organization Law and other labour laws to the employer and employees for their awareness. The Government adds that a new general manager of the hotel has been appointed and all staff is treated equally and without discrimination. The investigation team has also observed that the employer did not deter the peaceful demonstration of workers, and workers and staff are now performing their duties peacefully.
59. Regarding the Application of Writs Act, the Government refers to the position of the Supreme Court, which it describes as follows: (a) the Supreme Court of the Union of Myanmar has the power to issue the Writ of Certiorari for ensuring the fundamental rights of citizens provided in the national Constitution (2008). The Application of Writs Act should not be abrogated because the citizens enjoy their fundamental rights provided for in the Constitution by applying the writs for the reprieves which they can receive under that Act; (b) the Application of Writs Act does not deal with labour disputes only and should not be abrogated because it is the law which is applicable for implementing the fundamental rights and duties of citizens; and (c) a two-year time frame for the Writ of Certiorari and the Writ of Prohibition is appropriate and, thus, the Supreme Court of the Union of Myanmar will not undertake any measure to modify the said time frame which allows the appeal process.
60. *The Committee recalls that in its previous examination of the case it had noted that both the complainant and the Government reported progress with regard to the labour relations at*

the hotel and, in particular, the effective reinstatement of the five union members and their access to the workplace following a judgment of the Supreme Court, as well as ongoing good faith negotiations [see 381st Report, para. 66]. The Committee takes note of the additional information provided by the Government on the outcome of the tripartite investigation into the allegations of anti-union discrimination, harassment, and intimidation of anti-union members and officials, as well as into the specific allegation of intimidation after a peaceful demonstration of union and non-union members. The Committee also welcomes the measures taken to familiarize workers and employers with the labour laws.

61. *The Committee further notes the information provided by the Government on the position of the Supreme Court regarding the amendment of the Application of Writs Act, and in particular, that the Supreme Court considers that the Act should not be amended and that the two-year time frame for appeals is appropriate. The Committee recalls from its previous examination of the case that according to the complainant, the Application of Writs Act allows an appeals process to remain open for up to two years even if both parties to a dispute have reached a settlement and can thus deprive workers from exercising and accessing their rights. The Committee recalls that cases concerning anti-union discrimination should be examined rapidly, so that the necessary remedies can be really effective; an excessive delay in processing such cases constitutes a serious attack on the trade union rights of those concerned [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1139]. Furthermore, delay in the conclusion of proceedings giving access to remedies diminishes in itself the effectiveness of those remedies, since the situation complained of has often been changed irreversibly, to a point where it becomes impossible to order adequate redress or come back to the status quo ante [see **Compilation**, op. cit., para. 1144]. The Committee also recalls that the ultimate responsibility for ensuring respect for the principles of freedom of association lies with the Government [see **Compilation**, op. cit., para. 46]. The Committee therefore once again requests the Government to review the Application of Writs Act and its impact on the exercise of trade union rights, in consultation with the employers' and workers' organizations concerned, with a view to ensuring that its application does not undermine the effective protection of workers against anti-union discrimination and interference. It requests the Government to keep it informed of the developments in this respect.*

Case No. 2096 (Pakistan)

62. The Committee last examined this case concerning restrictions on the trade union rights of banking sector employees following the enactment of section 27-B of the Banking Companies (Amendment) Act, 1997, at its October 2017 meeting [see 383rd Report, paras 66–69]. On that occasion the Committee firmly urged the Government to take all the necessary measures to ensure that all pending cases of dismissed workers, including Messrs Assad Shahbaz Bhatti, Malik Arshad Mehmood, Zulfikaar Hussain Awan, Mazhar Iqbal Sial, and Nasir Qayyumare, be resolved without delay and to provide full information on the judgments rendered. The Committee also requested the Government to indicate whether the heirs of Mr Maqsood Ahmad Farooqui had received the relevant compensation following the decision of the Punjab Labour Appellate Tribunal in Lahore on 26 January 2011, and to indicate the amount thereof. Finally the Committee recalls that it drew the attention of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) to the legislative aspects of this case (the need to amend the Banking Companies (Amendment) Act).
63. In its communication dated 24 November 2018, the complainant, United Bank Limited (UBL) Employees Union, alleges a total lack of progress in the implementation of the Committee's recommendations in this case. It emphasizes, in particular, that no measures have been taken with regard to the amendment of section 27-B of the Banking Companies

(Amendment) Act nor with regard to the reinstatement of dismissed trade unionists in the banking sector since the Committee's first examination of the case in 2001.

64. In its communications dated 29 May, 7 August, 28 September and 2 October 2018, the Government indicates that, regarding the pending cases of dismissed workers, the matter was taken up with the bank for comments, which had replied that none of the employees involved in this case were members of any union and that the services of the officers were terminated by invoking the relevant clause of their appointment letters duly accepted by them at the time of appointment. As per that clause, either party can terminate the contract by giving a notice or making payment in lieu of a notice period. Since the services of the said officers were no longer required, the bank invoked the clause and separated them from the service. The Government adds that most of the dismissal cases (involving Messrs Assad Shahbaz Bhatti, Malik Arshad Mehmood, Zulfikaar Hussain Awan, Mazhar Iqbal Sial, and Nasir Qayyumare) have already been disposed of and the bank is contesting the cases which are still pending in various courts.
65. The Government further indicates that the heirs of Mr Maqsood A. Farooqui and the bank have reached an out-of-court settlement and provides a copy of the relevant pay orders.
66. Finally, the Government reiterates that any amendment to section 27-B of the Banking Companies (Amendment) Act would expose banks to illegal activities.
67. *The Committee notes the information provided by the Government but observes with deep concern the Government's indication that some of the cases are still pending, 18 years since the dismissals. The Committee is therefore bound to reiterate that the cases of these dismissed workers is a striking example of the principle justice delayed is justice denied. The Committee once again requests the Government to ensure that all pending cases of dismissed workers are resolved without delay and to provide full information and copies of the judgments rendered, including those that have already been disposed of.*
68. *The Committee takes note of the Government's indication that the heirs of Mr Maqsood Ahmad Farooqui reached an out-of-court settlement with the bank and that the agreed upon settlement dues have been paid.*
69. *Finally, the Committee observes that, within the framework of its regular supervision, the CEACR has continued to examine the legislative aspects of this case.*

Case No. 2716 (Philippines)

70. The Committee last examined this case of a Supreme Court decision finding that workers who shaved or cropped their hair while at work had engaged in an unprotected illegal strike, and thus upholding the dismissal of 29 trade union officers and allowing the dismissal of 61 trade union members, in violation of the principles of freedom of association and expression, at its October 2010 meeting [see 358th Report, approved by the Governing Body at its 309th Session, paras 827–867]. On that occasion, the Committee made the following recommendations [see 358th Report, para. 867]:
 - (a) The Committee requests the Government to keep it informed with regard to the initiated legislative reform, which according to the Government should result, among others, in amending article 263(g) of the Labor Code.
 - (b) Noting the Government's indication that it has met with the relevant parties and commenced exploratory talks on possible "out-of-the-box" solutions to the conflict, the Committee requests the Government, within this context, to review with the hotel management and the dismissed workers concerned the feasibility of their reinstatement and for those who cannot be immediately reinstated, the possibility of including them in

work rosters for their re-engagement on a priority basis or of adequately compensating them. It further requests the Government to review the adequacy of the separation payment provided to the 61 dismissed trade union members with a view to ensuring that they are sufficiently compensated proportionate to the losses incurred. The Committee requests the Government to keep it informed of the progress made in reaching a satisfactory solution for all concerned.

71. The complainants provide additional information in communications dated 27 October 2010, 30 April 2013 and 8 May 2019. They call on the Committee to examine the case so that the Government would be directed to respect and comply with international treaties, including ILO Conventions, and allege that even though the Department of Labor and Employment (DOLE) has taken some steps to ensure compliance with the Committee's recommendations, all its initiatives failed to move the hotel ¹ to abandon its recalcitrant attitude. The complainants allege that there is no development on the proposed "out-of-the-box solution", the Government did not extend any support to the workers with the supposed livelihood programme and the dismissed workers, even though visited by the management at their homes, have not accepted any remuneration. Furthermore, the Supreme Court continues to expunge from the records the motions filed by the workers questioning the constitutionality of the substantive and procedural aspects of the relevant decision, without addressing such issues, and the Solicitor General has yet to intervene in the judicial process and call on the Supreme Court to review the case *en banc*. The dismissed union officers and members have been individually writing to the Associate Justices of the Supreme Court to plead with them to review the case, the latest motion for reconsideration was filed in September 2018 and the complainants believe that it is the Court's responsibility to hear the case *en banc*. Finally, the complainants denounce that the local union established by the management has been organized again and is now an affiliate of the National Union of Workers in Hotel Restaurant and Allied Industries (NUWHRAIN).
72. The Government provides its observations in communications dated 15 November 2010, 1 June 2011 and 26 May 2014. With regard to the dispute between the hotel management and the hotel trade union which involves allegations of anti-union dismissals, the Government reiterates that the DOLE has extended the possibility of exploring acceptable "out-of-the-box solution" to both parties and adds that, while exploratory discussion was held with the hotel management on reinstatement of the concerned workers in other positions or jobs, the DOLE and the union were also looking at immediate remedial intervention for the affected workers, such as a livelihood grant. According to the Government, the possibility of reinstatement of the workers was nil given the finality of the Supreme Court decision and the union president also considered reinstatement not feasible given that the same management and lawyers were still handling the case. Nevertheless, the union was preparing a project proposal and their capability to implement the livelihood grant. The DOLE also requested the hotel management and the union to meet to explore options with respect to the Committee's recommendations, as well as a meeting with the High Court's representatives to discuss the issues arising from the relevant decision but the meetings have not materialized and the Committee's recommendations were thus presented before the National Tripartite Industrial Peace Council Monitoring Body (NTIPC-MB).
73. The Government further informs that two Labor Sector Joint Resolutions were issued relative to the present case. Firstly, Joint Resolution No. 2, Series of 2013, entitled "Calling on All Government Agencies to Uphold the Protection and Promotion of Workers Rights", asking the DOLE and the Department of Budget and Management to inform all government offices to refrain from engaging companies or business organizations found to be violating the rights of its workers, and to include the observance of these rights as a factor in the procurement of products and services from companies or business organizations. The present

¹ Dusit Hotel Nikko.

case was used as a specific example and the resolution was forwarded to all government agencies, branches and instrumentalities. Secondly, Joint Resolution No. 3, Series of 2013, entitled “Calling on the Office of the Solicitor General to Make Manifestation before the Supreme Court on the Dusit Case”, asking the Office of the Solicitor General (OSG), as the people’s advocate, to make the necessary intervention for the Supreme Court to take cognizance of the ILO recommendations and review *en banc* the decision of the Second Division which allegedly expanded the legal definition of strike to include peaceful modes of speech or expression which is a blatant violation of Article 8(2) of Convention No. 87. This resolution has been forwarded to the OSG but it informed that neither the OSG nor other legal bodies had power to intervene for the reopening of the case, considering that the decision was final and executory and only the Supreme Court could, *motu proprio*, order the reopening of the case.

74. With regard to the amendment of article 263(g) of the Labor Code, the Government provides detailed information about the ongoing legislative reform and indicates that one part of the reform which focuses on strengthening trade unionism and removing obstacles to the effective exercise of labour rights has been moving forward. In particular, a draft bill was submitted to the NTIPC seeking to amend article 263(g) of the Labor Code which authorizes the Secretary of Labor and the President to assume jurisdiction over labour disputes imbued with national interest. The amendment limits the assumption of jurisdiction to the ILO’s concept of essential services and removes criminal sanction for mere participation in illegal strike on the ground of non-compliance with the administrative requirements. The Government informs that the draft bill underwent tripartite consultations and was later substantially modified to reflect the discussion with ILO experts. It affords flexibility in determining the industries providing essential services based on the prevailing circumstances in the country and merely sets the “essential services” criterion as a guidepost for a list of industries providing “essential services” as determined through tripartite consultation. The draft bill thus seeks to limit the automatic issuance of assumption of jurisdiction to two situations, one concerns the ILO concept of essential services or industry determined through tripartite consultation as providing essential services, which if interrupted would endanger the life, personal safety or health of the whole or part of the population and the second relates to non-essential services upon request from both parties involved in the labour dispute after mandatory conciliation.
75. The Government further informs that several interim administrative measures were taken, namely, the approval by the NTIPC of Department Order No. 40-G-03, Series of 2010, amending Department Order No. 40, Series of 2003, providing the implementing rule on the exercise of the assumption of jurisdiction power of the Secretary of Labor under article 263(g) of the Labor Code. In February 2011, Operational Guidelines on Department Order No. 40-G-03, Series of 2010 were also issued so as to further clarify its implementation, harmonize it with other guidelines and set out when and how the police will be engaged in strikes and lockout. According to the Government, the application of the Department Order in actual cases has been on the use of intensive conciliation–mediation rather than resort to the Secretary’s assumption power, and the percentage of labour cases in which the Secretary has assumed jurisdiction out of the total number of labour cases has markedly decreased. In October 2013, a DOLE Department Order No. 40-H-13 was issued in order to further help shift the exercise of the assumption of jurisdiction power from the criteria of “industry indispensable to the national interest” to “essential services” criteria. The Department Order provides an indicative list of industries indispensable to the national interest harmonized with the essential services criteria of Convention No. 87. These industries include the hospital sector, electric power industry, water supply services (except small water supply services, such as bottling and refilling stations) and air traffic control, and other industries may be included upon recommendation of the NTIPC. The Department Order also reiterates the procedure for the exercise of the Secretary’s assumption power, where either or both parties shall invoke the exercise of the assumptive power through a

petition for assumption of jurisdiction. If invoked by both parties, its issuance is automatic regardless of the category of the industry; if invoked by one party, the petition would trigger the conduct of an exhaustive conciliation under the Office of the Secretary until settlement is reached. In both instances, conciliated agreement is worked out and arbitral award is the last resort. The Department Order was crafted through the NTIPC, the tripartite partners were able to fine-tune its features during its implementation and the positive experience contributed to their tripartite endorsement. According to the Government, the Administrative Order is expected to facilitate the passage of the Assumption of Jurisdiction Bill in the Congress.

76. Finally, the Government provides detailed information on other aspects of the legislative and institutional reforms ongoing in the country, especially in the labour arbitration and adjudication system, including extensive capacity-building and awareness-raising activities on freedom of association and collective bargaining, as well as on compliance with other international labour standards.
77. *With regard to the allegations of anti-union dismissals and the 2008 Supreme Court decision upholding the dismissal of 29 trade union officers and allowing the dismissal of 61 trade union members, the Committee understands from the information provided by the Government and the complainants that despite specific efforts by the Government to ensure compliance with the Committee's previous recommendations, including arrangement of meetings between the parties and a request to the Solicitor General to intervene with the Supreme Court to review the contested decision, no significant developments have been achieved in redressing the situation of the dismissed workers. Further noting that both the hotel union and the Government, albeit for different reasons, consider that reinstatement of the concerned workers is not feasible and that the Committee's recommendations were presented before the National Tripartite Industrial Peace Council Monitoring Body (NTICP-MB), the Committee trusts that progress will be made without delay towards reaching a satisfactory solution for all concerned and requests the Government to provide updated information on the current situation of the dismissed workers, including any compensatory settlement agreements reached, as well as on the allegation that a management-supported union was again established in the hotel. The Committee further requests the Government to inform it of any findings made by the NTICP-MB in this regard, as well as any measures taken as a result thereof.*
78. *Concerning the amendment of article 263(g) of the Labor Code (now renumbered as article 278(g)), the Committee notes the Government's indication that a draft bill was introduced into Congress seeking to limit the automatic issuance of assumption of jurisdiction to two situations, one concerning the ILO concept of essential services determined through tripartite consultation and another in non-essential services upon request from both parties involved in the labour dispute after mandatory conciliation. In addition, Department Order No. 40-H-13 was issued to help shift the exercise of the assumption of jurisdiction power from the criteria of "industry indispensable to the national interest" to "essential services" criteria and should, according to the Government, facilitate the passage in Congress of the Assumption of Jurisdiction Bill. While taking due note of the Government's efforts and of the administrative measures adopted in this regard, the Committee recalls that the legislative reform aiming at amending article 278(g) of the Labor Code has been ongoing for many years. In these circumstances, the Committee expects the legislative amendments to be adopted in the very near future and to keep it informed in this regard.*

Case No. 3236 (Philippines)

79. The Committee last examined this case, which concerns allegations of anti-union practices, including anti-union dismissals and harassment, and the failure of the authorities to take

corrective measures, at its November 2017 meeting [see 383rd Report, paras 561–591]. On that occasion, the Committee made the following recommendations [see 383rd Report, para. 591]:

- (a) The Committee requests the Government to conduct an independent inquiry into the allegation that more than 180 workers were terminated on the grounds of their involvement in the establishment of the union or their affiliation to the union, and, should it be found that they were dismissed for anti-union reasons, to take, as a matter of urgency, the necessary measures to ensure their full reinstatement without loss of pay, or, in the event that reinstatement is found to be no longer possible, for objective and compelling reasons, to take the necessary measures to ensure that the union officers and members concerned are paid adequate compensation which would represent a sufficiently dissuasive sanction for anti-union dismissals. In this regard, and with reference to the deadlock reached according to the Government in 2016, the Committee encourages the Government to actively intercede with the parties, including within the framework of the ongoing conciliation-mediation proceedings, with a view to promoting a mutually satisfactory solution to this enduring dispute and related hardship.
- (b) The Committee requests the Government to initiate an independent inquiry into the allegation that 58 workers were dismissed for having exercised their right to strike, and if found to be true, to take appropriate remedial measures. It also requests the Government to provide information as to the outcome of the compulsory arbitration proceedings before the NLRC concerning the illegality of the union's strike action.
- (c) The Committee trusts that the Government will take the necessary measures so that, in the future, appeals of administrative dissolution orders have a suspensive effect.
- (d) The Committee invites the Government, when interacting with the parties, to seek to foster a climate of dialogue and trust between the union and management, with a view to restoring harmonious labour relations and promoting meaningful collective bargaining.

- 80.** The Government provides its observations in a communication dated 31 January 2018. Regarding the allegation that more than 180 workers were terminated on the grounds of their involvement in the establishment of the United Workers of Citra Mina Group of Companies Union (UWCMGCU), it indicates that the matter is already under the jurisdiction of the National Labor Relations Commission (NLRC) Sub-Regional Arbitration Branch XII. The Government emphasizes in this regard that the NLRC is an independent quasi-judicial body aiming to promote and maintain industrial peace by resolving labour and management disputes involving both local and overseas workers through compulsory arbitration and alternative methods of dispute resolution. It is attached to the Department of Labor and Employment (DOLE) for programme and policy coordination and its commissioners are appointed on recommendation of tripartite sectors. The Government further affirms that since the onset of the labour dispute, all possible services and assistance have been rendered thereto, demonstrating the efforts to address and resolve the dispute and that, to date, conciliation and meditation are still exercised between the parties with a view to achieving a win-win solution. Since the NLRC is currently addressing the matter, conducting an independent inquiry would only duplicate the proceedings.
- 81.** With regard to the allegation that 58 workers were dismissed for exercising their right to strike, the Government states that conducting an independent inquiry would constitute a duplication of proceedings since the case is also under the jurisdiction of the NLRC. It adds that a decision dated 7 November 2016 by the Executive Labor Arbiter Jocelyn Vasallo, declaring the 2013 strike illegal, and directing the company to pay the 12 respondent strikers their separation pay of one-month salary for every year of service on humanitarian grounds, is on appeal.
- 82.** Concerning the Committee's request to ensure that appeals of administrative dissolution orders have a suspensive effect, the Government informs that under the existing rules, such appeals already have a suspensive effect. The legal effect of cancellation of a union's

registration is held in abeyance until the order becomes final and executory so that, pending the appeal, the union retains its judicial personality. The Government further indicates with regard to the particular case of the UWCMGCU, that, although it had been delisted, this did not result in the cancellation of its registration as the union remained entitled to the rights granted under the Labor Code.

83. Finally, the Government states that fostering a climate of dialogue and trust between the parties is already inherent to its tasks. It emphasizes that DOLE's mandate to maintain a harmonious, equitable and stable labour relations system was also reiterated in the current Eight-Point Labor and Employment Agenda and that all efforts directed towards attaining and sustaining decent work and industrial peace are anchored on the social justice principles of dialogue and mutual trust between workers and employers.
84. *The Committee takes note of the information provided by the Government and observes, in particular, the Government's indication that the allegations of massive dismissals of trade unionists, both on the ground of their involvement in the establishment of the trade union and for their participation in the strike, are under the examination of the NLRC, an independent quasi-judicial body under the auspices of the DOLE. The Committee further notes that conciliation-mediation efforts are still ongoing and that, according to the Government, all possible services and assistance have been rendered thereto. While taking due note of this information, the Committee cannot but regret that, notwithstanding a considerable lapse of time (more than five years since the alleged incidents), the proceedings at the national level have yet to give rise to a comprehensive resolution of the concrete dispute and the serious allegations of mass terminations on trade union grounds remain unresolved. Recalling in this regard that justice delayed is justice denied [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 170], the Committee trusts that the proceedings before the NLRC will fully examine all anti-union allegations raised by the complainant, that the NLRC will render its decisions without delay and that, if the allegations are found to be true, the Government will take the appropriate remedial measures. The Committee requests the Government to keep it informed of the NLRC's decisions as soon as they are handed down, as well as of the outcome of the mediation-conciliation proceedings ongoing between the parties. Further noting that the 2016 decision of the labour arbiter declaring the union's strike action illegal is now on appeal before the NLRC, the Committee requests the Government to keep it informed of the outcome of the appeal. The Committee trusts that, when interacting with the parties, the Government will continue to foster a climate of dialogue and trust between the union and the management, with a view to restoring harmonious labour relations and promoting meaningful collective bargaining.*
85. *The Committee further notes the Government's indication that under the existing rules, appeals of administrative dissolution orders have a suspensive effect on the cancellation of union registration, so that, despite being delisted from the legitimate labour union register, as was the case of the UWCMGCU, the union remains entitled to the rights granted under the Labor Code. Nevertheless, in view of the concerns raised by the complainant as to the serious consequences delisting from the register may have on the functioning of a trade union, the Committee requests the Government to take the necessary measures to ensure that, in the future, appeals of administrative dissolution orders have a suspensive effect on both the cancellation of a trade union's registration and its delisting from the legitimate labour union register.*

Case No. 3164 (Thailand)

86. The Committee last examined this case concerning legislative shortcomings (denial or restriction of the rights to organize and bargain collectively to public sector workers, private sector teachers, agricultural workers, workers in the informal sector, migrant workers and

temporary, agency or other subcontracted workers; insufficient protection against acts of anti-union discrimination; difficulty to bargain collectively; and denial of the right to strike to public sector workers); acts of anti-union discrimination, interference, harassment and other anti-union practices in a number of enterprises and the Government's failure to protect the workers at its October 2016 meeting [see 380th Report, paras 977–1064]. On that occasion, the Committee made the following recommendations [see 380th Report, para. 1064]:

- (a) The Committee urges the Government to take concrete measures to speed up the revision process of the LRA and the SELRA in order to align the applicable legislation with the principles of freedom of association and collective bargaining and to ensure that all issues raised by the Committee in this case as well as in Case No. 1581 are properly addressed. The Committee reminds the Government that it can avail itself of ILO technical assistance in this regard and requests the Government to keep it informed of any developments in this respect and to provide it with the text of the amendments to the LRA and the SELRA.
- (b) With regard to the allegations of insufficient protection against anti-union discrimination and anti-union practices in various enterprises, as well as the Government's failure to protect the workers, the Committee requests the Government to take the necessary measures to ensure that workers are effectively protected against acts of anti-union discrimination at all times, both in law and in practice, and that this protection covers all legitimate trade union activities, including those relative to the establishment of workers' organizations.

87. In its communication dated 20 September 2018, the Government indicates that the Ministry of Labour has drafted amendments to the Labour Relations Act (LRA) and the State Enterprise Labour Relations Act (SELRA) and that the approval of the National Legislative Assembly and the subsequent promulgation of the new legislation is anticipated by the end of 2018.

88. The Government indicates, in particular, that the main points of the SELRA revision are the following: state enterprise employers/executives are entitled to lock out, while employees are entitled to strike according to the rules and methods stipulated by law. Employers or workers who want to lock out or strike need to notify the conciliation officer and the other party in writing at least 24 hours in advance, starting from the time that the conciliation officer and the other party have been notified. If the lockout or the strike is to be attempted by a public services provider, as prescribed in the notification of the Committee of State Enterprise Labour Relations, registered in the *Government Gazette*, the party responsible for the lockout or the strike must provide minimum services to minimize damages to public order that may result from the lockout or strike. As for the LRA, according to the Government: (a) the definition of worker includes subcontracted workers that are part of the production process or business operations of the employer. The provision enables subcontracted workers to join the trade union of the establishment they are working for; (b) a new provision allows migrant workers to join a union as committee members; (c) the existing provision regarding workers' protection from unfair treatment during the establishment of a trade union is amended; (d) a new provision has been introduced on the establishment of a Labour Relations Promotion Committee to provide observations and recommendations to employers' and workers' organizations on measures or guidelines to appropriately solve labour issues on the basis of integrity and the promotion of a labour relations system; (e) the definition of unfair treatment is expanded to include career transfer, wage reduction, and no job assignment. The new provision further prevents anti-union discrimination by prohibiting employers from locking-out workers responsible for launching a complaint or other workers partially responsible for a complaint; and (f) a new provision is also introduced to enhance law enforcement against unfair treatments, that is to say, a provision that Labour Court proceedings shall not be a reason to subvert the Labour Relations Committee's order.

89. The Government further states that the Ministry of Labour organized a meeting of the working group on International Labour Standards on 2 August 2018 to discuss the major obstacles in aligning the national legislation with the principles of the ILO's fundamental Conventions. During the meeting, participants from the Office of the Civil Service Commission (OCSC) acknowledged the principle of the right to organize and collectively bargain and agreed to take it into consideration and come up with appropriate measures.
90. *The Committee notes with interest the detailed information provided by the Government on the proposed amendments to the LRA and the SELRA and notes that these amendments should expand protection of workers against anti-union discrimination and unfair treatment. Recalling that it has been examining the conformity of the LRA and the SELRA with the principles of freedom of association since 1991 (Case No. 1581) and had previously expressed concern at the prolonged period of revision of the laws [see 333rd Report, para. 137], the Committee trusts that these legislative amendments will be adopted without delay and requests the Government to keep it informed of any developments in this regard and to provide a copy of the revised LRA and SELRA once adopted.*

Case No. 3180 (Thailand)

91. The Committee last examined this case concerning allegations of judicial and disciplinary harassment of four leaders of the Thai Airways International Union (TG Union) and failures in Thai law to protect workers' and trade union rights, as well as inconsistencies between the law and the principles of freedom of association and the right to collective bargaining, at its March 2017 meeting [see 381st Report, paras 549–582]. On that occasion, the Committee made the following recommendations [see 381st Report, para. 582]:
- (a) Noting with interest the Government's indication that the tripartite working group revising the SELRA proposed deleting sections 33 and 77 of the SELRA, the Committee trusts that the revision process will result in the abrogation of these provisions without delay and requests the Government to keep it informed of the progress made in this regard.
 - (b) Considering that, upon the claim for damages lodged by the company over losses allegedly attributable to the protest action, the damages ordered against the four union officials are based on violations of strike prohibitions which are themselves contrary to the principles of freedom of association, and that their excessive amount is likely to have an intimidating effect on the TG Union and its leaders and inhibit their legitimate trade union activities, the Committee trusts that the Supreme Labour Court will be informed by the Government of the Committee's conclusions concerning the principles of freedom of association. The Committee requests the Government to keep it informed of developments in this regard and to provide a copy of the Supreme Labour Court's decision once it is handed down.
 - (c) Considering that the disciplinary measures imposed by the company against officials of the TG Union due to the conduct of the protest have been imposed in response to violations of strike prohibitions, which are themselves contrary to the principles of freedom of association, the Committee trusts that the Labour Court will be informed by the Government of the Committee's conclusions concerning the principles of freedom of association and requests the Government to keep it informed of any developments in this regard.
92. In a communication dated 27 September 2017, the Government indicates that the Ministry of Labour proposed to delete sections 33 and 77 of the State Enterprise Labour Relations Act (SELRA) so as to grant state enterprises' labour unions the right to strike in accordance with the procedures prescribed by the law and that the draft SELRA is in the process of being submitted to the Cabinet for approval of principles. The Government further indicates that the four defendants were scheduled to hear the Supreme Labour Court final decision on 4 September 2017.

93. *The Committee takes note of the information provided by the Government. It observes that in a communication dated 20 September 2018, in the framework of Case No. 3164, the Government provides recent information regarding the ongoing legislative reform. It refers to its conclusions in that case.*
94. *With regard to the Supreme Labour Court's decision on the company's claim for damages over losses allegedly attributable to the protest action, the Committee recalls its previous conclusions that the damages ordered against the four union officials were based on violations of strike prohibitions which were themselves contrary to the principles of freedom of association, and that their excessive amount was likely to have an intimidating effect on the TG Union and its leaders and inhibit their legitimate trade union activities. Regretting that the Government does not provide any information on the final decision which, according to the Government, was scheduled for 4 September 2017, the Committee trusts that its conclusions concerning principles of freedom of association were brought to the attention of the Supreme Labour Court and requests the Government to provide a copy of the decision without further delay.*
95. *The Committee further regrets that the Government does not provide any information on the appeal before the Labour Court against the disciplinary measures imposed on officials of the union and recalls its previous conclusions that such disciplinary measures were imposed in response to violations of strike prohibitions, which were themselves contrary to the principles of freedom of association. The Committee trusts that the Labour Court has been informed by the Government of the Committee's conclusions on this matter and requests the Government to keep it informed of any developments in this respect.*

Case No. 2789 (Turkey)

96. The Committee last examined this case which concerns allegations of union busting and anti-union discrimination at two enterprises¹ and the dual representativeness threshold required by legislation for a union to gain recognition for collective bargaining purposes as well as the requirement of the intervention of a public notary to become a member of a trade union or to resign from it, at its March 2012 meeting [see 363rd Report, paras 1098–1132]. On that occasion, the Committee requested the Government to keep it informed of the outcome of judicial proceedings relating to the alleged anti-union dismissals in enterprise (a), to investigate other allegations of anti-union discrimination there and the employer's refusal to meet with the union to discuss issues of downsizing, and take the necessary measures so that the management recognizes the union. With regard to allegations concerning enterprise (b), the Committee requested both the Government and the complainant to send further information on the number of workers involved and to keep it informed of the status of two dismissal cases that were appealed by the employer. It further requested the Government to ensure the implementation of the court judgments ordering the reinstatement of dismissed workers and payment of compensation to them; to indicate whether a Joint Workers' Council was established at the enterprise and was functioning and to provide information with regard to the enquiry made into allegations of harassment of workers. The Committee further expressed its expectation that the Government bring its legislation and practice into line with the principles of freedom of association and drew the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of the case.
97. The Government sent observations on the legislative aspects of the case and the situation in enterprises (a) and (b) in communications dated 6 September 2013, 5 September 2014 and

¹ Menderes Tekstil (hereinafter enterprise (a)) and Desa Deri Sanayi ve Ticaret AS (hereinafter enterprise (b)).

16 October 2017. With regard to the legal requirement of the intervention of a public notary to become a member of a trade union or to resign from it, the Government indicates in its 2014 communication that paragraph 5 of article 17 of the Law on Trade Unions and Collective Labour Agreements (Law No. 6356) has removed the notary condition by providing that application for membership in a trade union is filed via e-State with the electronic application system provided by the Ministry of Labour. With regard to the dual representativeness threshold requirement, the Government provides updated information in its 2017 communication, indicating that article 41 of the Law No. 6356 has been amended so as to reduce the branch threshold to 1 per cent and under the amended provision “The workers’ trade union representing at least 1 per cent of the workers engaged in a given branch of activity and more than half of the workers employed in the workplace and forty per cent of the workers in the enterprise to be covered by the collective labour agreement shall be authorized to conclude a collective labour agreement covering the workplace or enterprise in question.”

98. With regard to the situation in enterprise (a), the Government indicates in its 2014 communication that Teksif Trade Union, operating in the branch of activity of Weaving, Garment and Leather No. 5 as per schedule (1) of the first paragraph of article 4 of Law No. 6356, has not initiated the legal process provided in the laws in order to organize in the said workplace. Furthermore, Teksif only signed a collective labour agreement in enterprise (a) in 1989–91 and there has been no collective labour agreement process afterwards. The Government then reiterates the conclusions of the report drawn up by the inspectors of the Ministry of Labour following an inspection made at the enterprise in 2011 that were noted by the Committee in its previous examination of this case. In particular, the Government reiterates that although the proceedings concerning some of the cases filed by workers are still ongoing, the verdict of local courts stating that “termination of service contracts cannot be considered as an evidence of obstacle before freedom of association” shows that the allegations of anti-union dismissal are not founded, and that according to Turkish legislation, a trade union whose competence to conclude the collective labour agreement is not certified is not accepted to represent workers against employers and therefore, the employer’s refusal to work with Teksif cannot be criticized and be considered as a ground for complaint.
99. With regard to the situation in enterprise (b), the Government indicates in its 2017 communication that inspections were conducted in 2011 in three plants of the enterprise, namely Düzce OSB, Çorlu/Tekirdağ and Sefaköy/İstanbul. With regard to the first plant, the Government indicates that after the initiation of unionization efforts in June 2008, the employer terminated the contracts of several workers, and it was found in final judicial rulings that these terminations were based on anti-union grounds and consequently seven dismissed workers returned to work, six of whom declared that they still worked for the enterprise as of the inspection date. With regard to the second plant, the Government indicates that witnesses stated confidentially that no pressure was put on them in relation to union membership activity or membership and the employer stated that it had established the Joint Workers’ Council with a view to further motivate the workers and facilitate the communication of problems and suggestions for improvement to the management. The members of the board were elected by workers for three years in a secret ballot and the minutes of the election were seen during the inspection. With regard to the third plant, the Government indicates that the Labour Court found Ms Emine Arsalan’s dismissal was based on anti-union grounds and the Appeal Court confirmed this ruling on 13 April 2009. However, the employer refused to reinstate her and instead paid her compensation. The Government also refers to the case of another worker, Mr Nevzat Ülkü, dismissed on 17 January 2011, who has filed a lawsuit against the employer claiming that his dismissal was based on anti-union grounds. According to the inspection report the case has not yet been concluded. The Government further indicates that during the inspection in the third plant, the representative of the employer denied the use of any pressure or coercion against workers in relation to trade union membership or activity. The workers’ statements were

however mixed: while some said they had not been subjected to any pressure or differential treatment, others expressed their belief that union membership may entail dismissal and said that they had resigned from the union in view of the fact that they were approaching retirement. The Government concludes that the inspection board could not reach any concrete determination with regard to allegations of anti-union pressure or formation of the Joint Council with a view to preventing union organization.

100. *The Committee notes the information provided by the Government. With regard to the situation in enterprise (a), the Committee notes that the Government provides no information as to the final outcome of the dismissal proceedings, neither does it refer to any enquiry into the general allegation of anti-union discrimination. The Government however emphasizes that the fact that the first instance courts have found no evidence of anti-union dismissals shows that the allegations were ill-founded. With regard to the recognition of Teksif Trade Union, the Committee notes the Government's indication that the union has not initiated the legal process in order to organize in the enterprise and adds that as the union's competence to conclude collective bargaining agreements at the enterprise (a) is not certified, the employer cannot be required to work with Teksif. In view of the number of years that have elapsed since the facts at the origin of this case took place and the lack of information from the complainant, that has been in the meantime replaced by a new international trade union – the International Textile, Garment and Leather Workers' Federation (ITGLWF) was dissolved in June 2012 and replaced by the IndustriALL Global Union together with two other international workers' federations, to which Teksif is an affiliate, the Committee recalls that the complainants had indicated that Teksif was the only union present at enterprise (a) and notes that despite this fact, the Government indicates that the employer's refusal to work with a union that does not qualify as exclusive bargaining agent is justified. The Committee recalls that the granting of exclusive rights to the most representative organization should not mean that the existence of other unions to which certain involved workers might wish to belong is prohibited. Minority organizations should be permitted to carry out their activities and at least to have the right to speak on behalf of their members and to represent them [see **Compilation**, para. 1388]. The Committee trusts that the Government will ensure respect for this principle.*
101. *With regard to enterprise (b), the Committee notes that the information submitted by the Government is drawn from inspection reports dating back to 2011 and that the complainant has not submitted the information requested in the Committee's recommendations at its last examination of this case. The Committee notes the Government's indication that seven workers dismissed on anti-union grounds were reinstated and recalls the previous Government indications according to which the courts found that 28 workers were dismissed for anti-union reasons but that the employer had preferred to pay compensation to 14 among them rather than reinstating them. The Committee notes that the precise number of workers involved and the outcome of the dismissal cases appealed by the employer remain unclear in the absence of clarification on the part of the Government and the complainant. The Committee further notes that the inspection board could not reach any determination on the issue of anti-union pressure and coercion in the third plant despite the fact that certain workers had expressed the belief that union membership could entail dismissal. In view of the time that has elapsed since the facts at the origin of this case and the absence of new information on the situation at the enterprise, the Committee is only in a position to recall the principle that respect for the principles of freedom of association clearly requires that workers who consider that they have been prejudiced because of their trade union activities should have access to means of redress which are expeditious, inexpensive and fully impartial [see **Compilation**, op. cit., para. 1142].*
102. *With regard to the legislative aspects of the case, the Committee notes the information submitted by the Government and recalls that the Committee of Experts, to which it has referred the legislative aspects of this case, is closely following the reforms related to the*

threshold of representativeness for collective bargaining purposes and its impact on the collective bargaining machinery as a whole. In view of the above conclusions the Committee will not pursue the examination of this case.

Case No. 3128 (Zimbabwe)

103. The Committee last examined this case in which the complainant, the Zimbabwe Congress of Trade Unions (ZCTU), alleged denial of registration of new trade unions and the ban by the police on trade union demonstrations, at its March 2016 meeting [see 377th Report, paras 442–476]. On that occasion, the Committee made the following recommendations [see 377th Report, para. 476]:

- (a) The Committee encourages the Government to amend the Labour Act in consultation with the social partners so as to:
 - (i) ensure that the conditions for the granting of registration are not tantamount to obtaining previous authorization from the public authorities for the establishment of a workers' or employers' organization;
 - (ii) to make it clear that when a trade union already exists for the same employees as those whom a new union seeking registration is organizing, or is proposing to organize, or the fact that the existing union holds a bargaining certificate in respect of such class of employees, this cannot give rise to objections of sufficient substance to justify the Registrar in refusing to register the new union; and
 - (iii) to ensure that the period for registering an organization is reasonable.

It requests the Government to keep the Committee of Experts on the Application of Conventions and Recommendations, to the attention of which it draws the legislative aspects of the case, informed of the progress made in this regard.

- (b) The Committee requests the Government to take the necessary measures in order to review the ZFTAWU application with a view to its registration, thus guaranteeing the right of the 850 workers alleged to be its members, to establish and join the organization of their own choosing without previous authorization. The Committee requests the Government to keep it informed in this respect.
- (c) As regards the NUMAIZ application for registration, the Committee requests the Government to ensure that the procedure is expedited, if it has yet to be concluded, and to transmit the Registrar's decision.
- (d) The Committee urges the Government to take the necessary steps for the adoption and effective implementation of the code of conduct so as to ensure that the police and security forces follow clear lines of conduct with regard to human rights and trade union rights. The Committee requests the Government to keep it informed in this respect.

104. In its communication dated 6 February 2018, the Government indicates that the work on amendments to the Labour Act (sections 33, 34 and 45) remains on course and that together with the social partners it has reached a consensus on the need to remove the Registrar's discretionary powers with regard to the registration of trade unions (section 34). The Government indicates that a consensus was reached at a tripartite meeting to review the third draft Labour Amendment Bill that was held on 8 December 2017 with the participation of the Attorney General's Office. It further states that the provisions requiring the Registrar to hold accreditation proceedings on the basis of objections by others persons (sections 33(2) and 45) would be repealed to give effect to the requirements of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). In addition, the Registrar will be required to process all applications within a stipulated time frame of 30 days from the date of the application. The Government points out that it is implementing a 100-day Rapid Results Initiative (RRI) which, among others, targets to facilitate the approval of the Labour Amendment Bill by the Cabinet by April 2018.

105. Concerning the allegations of denial of registration of the Zimbabwe Footwear Tanners and Allied Workers' Union (ZFTAWU) and the National Union of Metals and Allied Industries of Zimbabwe (NUMAIZ), the Government affirms that both unions were registered on 20 May 2016. However, the Labour Court had subsequently overturned their registration following an appeal by the opposing trade union parties. The Government provides a copy of the Labour Court judgments and reiterates its commitment to ensure that the legislation concerning registration formalities is amended as soon as possible in order to accord greater protection to freedom of association rights. In its communication dated 12 April 2019, the Government clarifies that the certificate of registration of the union of workers in the leather industry was nullified by the Labour Court on the grounds of violation of the procedure for registration. The union did not appeal but rather chooses to submit a new application, which is now under consideration by the Registrar. The applicant is expected to submit necessary documents to complete the registration process.
106. Finally, the Government informs that it had finalized and adopted, in November 2016, the code of conduct for state actors in the world of work in Zimbabwe and a handbook on freedom of association and civil liberties in the world of work and the role of law enforcement agencies in Zimbabwe. The Government adds that these two instruments are now part of the Zimbabwe Republic Police's training curriculum to ensure their sustainability and continuous implementation.
107. *The Committee takes note of the information provided by the Government regarding the proposed amendment of the Labour Act to repeal sections 33(2) and 45 and thereby remove discretionary powers accorded to the Registrar in the registration of trade unions and provide for a 30-day time frame from the date of application to process them. The Committee regrets the lack of progress made in this respect, despite the 100-day Rapid Results Initiative referred to by the Government, which intended, among others, to facilitate the approval of the Labour Amendment Bill by the Cabinet by April 2018. The Committee urges the Government to amend the Labour Act without further delay in consultation with the social partners and refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations.*
108. *The Committee further notes the Government's indication that the registration of both unions has been revoked by the respective decisions of the Labour Court, a copy of which it transmits. The Committee notes, however, that in the case involving NUMAIZ, the Labour Court, while cancelling its certificate of registration dated 20 May 2016, by consent ordered a new registration of the said union. Regarding the case of the ZFTAWU, the Committee notes from the decision of the Labour Court, which had revoked its registration, that the underlying cause therefor was the existence of another trade union in the sector. The Committee recalls in this respect that section 45 of the Labour Act would indeed appear to hinder the registration of a new organization if another registered organization already exists in a specific enterprise or occupation. The Committee once again recalls that a provision authorizing the refusal of an application for registration if another union, already registered, is sufficiently representative of the interests which the union seeking registration proposes to defend, means that, in certain cases, workers may be denied the right to join the organization of their own choosing, contrary to the principles of freedom of association [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 494]. The Committee understands from the Government's most recent communication that the union's new application for registration is currently under consideration by the Registrar and that the union is expected to submit the necessary documents to complete the registration process. The Committee requests the Government to keep it informed in this respect.*
109. *The Committee further notes the adoption of the code of conduct for state actors in the world of work in Zimbabwe and a handbook on freedom of association and civil liberties in the*

world of work and the role of law enforcement agencies in Zimbabwe. It further takes note of the Government's indication that these two instruments are now part of the Zimbabwe Republic Police's training curriculum. The Committee requests the Government to keep it informed of the activities undertaken to ensure a wide dissemination of the code of conduct and the handbook.

* * *

- 110.** Finally, the Committee requests the governments and/or complainants concerned to keep it informed of any developments relating to the following cases.

Case	Last examination on the merits	Last follow-up examination
1865 (Republic of Korea)	March 2009	June 2017
2086 (Paraguay)	June 2002	March 2017
2362 (Colombia)	March 2010	November 2012
2512 (India)	November 2007	March 2018
2528 (Philippines)	June 2012	November 2015
2603 (Argentina)	November 2008	November 2012
2637 (Malaysia)	March 2009	November 2017
2652 (Philippines)	March 2010	November 2015
2715 (Democratic Republic of the Congo)	November 2011	June 2014
2743 (Argentina)	March 2013	November 2015
2749 (France)	March 2014	–
2756 (Mali)	March 2011	June 2018
2797 (Democratic Republic of the Congo)	March 2014	–
2850 (Malaysia)	March 2012	June 2015
2871 (El Salvador)	June 2014	June 2015
2889 (Pakistan)	March 2016	–
2892 (Turkey)	March 2014	October 2015
2902 (Pakistan)	March 2019	–
2925 (Democratic Republic of the Congo)	March 2013	March 2014
2949 (Eswatini)	March 2013	March 2019
2962 (India)	June 2015	June 2018
2977 (Jordan)	March 2013	November 2015
2988 (Qatar)	March 2014	June 2017
2991 (India)	June 2013	March 2019
3003 (Canada)	March 2017	–
3011 (Turkey)	June 2014	November 2015
3022 (Thailand)	June 2014	March 2019
3036 (Bolivarian Republic of Venezuela)	November 2014	–
3041 (Cameroon)	November 2014	–
3046 (Argentina)	November 2015	–
3047 (Republic of Korea)	March 2017	–
3054 (El Salvador)	June 2015	–

Case	Last examination on the merits	Last follow-up examination
3058 (Djibouti)	March 2015	March 2019
3078 (Argentina)	March 2018	–
3083 (Argentina)	November 2015	–
3098 (Turkey)	June 2016	November 2017
3100 (India)	March 2016	–
3101 (Paraguay)	October 2015	June 2018
3107 (Canada)	March 2016	–
3110 (Paraguay)	June 2016	–
3120 (Argentina)	March 2019	–
3123 (Paraguay)	June 2016	–
3126 (Malaysia)	November 2017	–
3127 (Paraguay)	June 2018	–
3137 (Colombia)	October 2018	–
3150 (Colombia)	October 2018	–
3159 (Philippines)	June 2017	–
3167 (El Salvador)	November 2017	–
3169 (Guinea)	June 2016	–
3182 (Romania)	November 2016	–
3194 (El Salvador)	June 2018	–
3202 (Liberia)	March 2018	–
3209 (Senegal)	March 2018	–
3220 (Argentina)	March 2018	–
3227 (Republic of Korea)	March 2018	–
3229 (Argentina)	March 2018	–
3237 (Republic of Korea)	June 2018	–
3238 (Republic of Korea)	November 2017	–
3248 (Argentina)	October 2018	–
3253 (Costa Rica)	March 2019	–
3256 (El Salvador)	June 2018	–
3257 (Argentina)	October 2018	–
3268 (Honduras)	June 2018	–
3272 (Argentina)	October 2018	–
3274 (Canada)	October 2018	–
3276 (Cabo Verde)	March 2018	–
3278 (Australia)	March 2019	–
3283 (Kazakhstan)	June 2018	–
3285 (Plurinational State of Bolivia)	March 2019	–
3288 (Plurinational State of Bolivia)	March 2019	–
3289 (Pakistan)	June 2018	–
3305 (Indonesia)	March 2019	–

111. The Committee hopes that these governments will quickly provide the information requested.
112. In addition, the Committee has received information concerning the follow-up of Cases Nos 1787 (Colombia), 2153 (Algeria), 2341 (Guatemala), 2434 (Colombia), 2445 (Guatemala), 2488 (Philippines), 2533 (Peru), 2540 (Guatemala), 2566 (Iran, Islamic Republic of), 2583 and 2595 (Colombia), 2656 (Brazil), 2673 (Guatemala), 2679 (Mexico), 2684 (Ecuador), 2694 (Mexico), 2699 (Uruguay), 2700 (Guatemala), 2706 (Panama), 2708 (Guatemala), 2710 and 2719 (Colombia), 2723 (Fiji), 2745 (Philippines), 2746 (Costa Rica), 2750 (France), 2751 (Panama), 2753 (Djibouti), 2755 (Ecuador), 2758 (Russian Federation), 2763 (Bolivarian Republic of Venezuela), 2768 (Guatemala), 2793 (Colombia), 2816 (Peru), 2840 (Guatemala), 2852 (Colombia), 2854 and 2856 (Peru), 2870 (Argentina), 2872 (Guatemala), 2883 (Peru), 2896 (El Salvador), 2900 (Peru), 2916 (Nicaragua), 2924 (Colombia), 2934 (Peru), 2944 (Algeria), 2946 (Colombia), 2948 (Guatemala), 2952 (Lebanon), 2954 and 2960 (Colombia), 2966 (Peru), 2976 (Turkey), 2979 (Argentina), 2980 (El Salvador), 2982 (Peru), 2985 (El Salvador), 2987 (Argentina), 2994 (Tunisia), 2995 (Colombia), 2998 (Peru), 3006 (Bolivarian Republic of Venezuela), 3010 (Paraguay), 3016 (Bolivarian Republic of Venezuela), 3017 (Chile), 3019 (Paraguay), 3020 (Colombia), 3021 (Turkey), 3024 (Morocco), 3026 (Peru), 3030 (Mali), 3032 (Honduras), 3033 (Peru), 3035 (Guatemala), 3039 (Denmark), 3040 (Guatemala), 3043 (Peru), 3055 (Panama), 3056 (Peru), 3059 (Bolivarian Republic of Venezuela), 3061 (Colombia), 3065, 3066 and 3069 (Peru), 3072 (Portugal), 3075 (Argentina), 3077 (Honduras), 3085 (Algeria), 3087 and 3090 (Colombia), 3093 (Spain), 3095 (Tunisia), 3096 (Peru), 3097 (Colombia), 3102 (Chile), 3103 (Colombia), 3104 (Algeria), 3114 and 3131 (Colombia), 3142 (Cameroon), 3146 (Paraguay), 3162 (Costa Rica), 3170 (Peru), 3172 (Bolivarian Republic of Venezuela), 3177 (Nicaragua), 3188 (Guatemala), 3191 (Chile), 3196 (Thailand), 3212 and 3231 (Cameroon), 3240 (Tunisia), 3244 (Nepal), 3286 (Guatemala), 3287 (Honduras) and 3297 (Dominican Republic), which it will examine as swiftly as possible.

CASE NO. 3115

DEFINITIVE REPORT

**Complaint against the Government of Argentina
presented by
the Association of State Workers (ATE)**

Allegations: Interference by the authorities in the electoral process of the complainant organization (election of staff representatives and internal board members in the Ministry of Justice and Human Rights)

113. The complaint is contained in a communication from the Association of State Workers (ATE) dated 11 February 2015. The ATE sent additional information in a communication dated 29 April 2015.
114. The Government sent its observations in communications dated May, September and October 2015, February and July 2016, and February 2017.

115. Argentina has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

116. In its communication dated 11 February 2015, the ATE indicates that, on 22 March 2013 and 16 April 2014, its federal capital executive board issued calls for elections of staff representatives and internal board members in the Ministry of Justice and Human Rights and that both calls were challenged by a group of ATE members and internal board candidates, who argued that the calls did not comply with a decision of the Ministry of Labour, Employment and Social Security (MTESS) requiring elections to be carried out at each facility or building of the Ministry. The complainant organization indicates that the MTESS, through the National Directorate of Trade Union Associations (DNAS), upheld both objections and observed that the calls had not been issued in accordance with MTESS Decision No. 459/12, which provides that: (i) elections must be carried out at each facility belonging to the Ministry of Justice and Human Rights, and (ii) both workers who are union members and workers who are not members of any trade union and who have not participated in the elections of another national State trade union are eligible to vote in elections of staff representatives. On 13 May 2014, the DNAS advised the ATE to carry out the elections in accordance with the above-mentioned decision, by allowing all the employees of the relevant establishment to vote in the elections of staff representatives.
117. The complainant organization states that it was not possible for it to comply with the decision, as it had no means of identifying persons who were not members of any trade union who had not participated in the elections of another State trade union. It adds that, according to the statutes of the ATE, only union members may participate in its elections of staff representatives. The complainant indicates that, after holding elections on 21 May 2014, it filed an appeal for the reconsideration and hierarchical re-examination of the DNAS decision of 13 May 2014 and that the appeal was rejected by the MTESS in September 2014. The complainant also indicates that, in October 2014, the DNAS ordered it to issue a new call for elections within a ten-day period and that when it did not do so, on 15 December, the DNAS proposed the appointment of an official to call elections of staff representatives and internal board members in the Ministry of Justice and Human Rights. The complainant alleges that the State interfered in the internal affairs of the ATE, as the implementing authority unilaterally called elections of staff representatives and internal board members, and it also alleges interference by the employer, as the MTESS is both judge and party. The complainant indicates that it filed appeals for the reconsideration of the administrative decisions and that, when they were rejected, it filed a judicial appeal in accordance with article 62 of Act No. 23.551 on trade union associations.

B. The Government's reply

118. In its communications of May, September and October 2015, February and July 2016, and February 2017, the Government reports that the national courts have already ruled on the alleged acts in the present case and that, in this regard, final judgments have been handed down. The Government indicates that this case began when a group of ATE members and internal board candidates in the Ministry of Justice and Human Rights challenged the call for elections issued by the federal capital executive board of the ATE. According to the Government, as a result of the objection, the DNAS observed that the terms of the call had not been in line with Ministerial Decision No. 459/2012, which provides that the contributing members of each trade union organization are eligible to vote in the elections of staff representatives, without prejudice to the right of non-member workers to participate in the elections, as long as they do not participate in the elections of representatives

conducted by another co-existing trade union organization, as ATE staff representatives represent all workers, regardless of whether they are ATE members or not. In May 2014, the MTESS informed the ATE that all calls for elections must be in line with its decision and, in October 2014, in view of the time that had passed and the ATE's failure to issue a new call for elections, the DNAS ordered the ATE to issue, within ten days of the notification, a new call that would be in accordance with Ministerial Decision No. 459/2012. The Government indicates that, in December 2014, as there was no evidence that the ATE had complied with the request, it was proposed that an official should be appointed to call elections of staff representatives and internal board members in the Ministry.

119. The Government indicates that the MTSS rejected the ATE's appeals for the reconsideration and hierarchical re-examination of the decisions in which it was requested to issue a new call for elections and that, in accordance with section 62 of Act No. 23551, the ATE applied to the courts. According to the Government, in a judgment handed down on 14 October 2015, Chamber IX of the National Labour Court of Appeal upheld the administrative decisions that were under appeal. As can be seen in the copy of the judgment provided by the Government, the Court of Appeal: (i) while affirming the need for caution with regard to public authority interference in the internal affairs of trade union associations in accordance with, inter alia, the provisions of Act No. 23551 on trade union associations and the principles of freedom of association enshrined in Convention No. 87, found that the Ministry of Labour acts as an implementing authority of the Act, which gives it, in principle, full supervisory authority, and (ii) found that the intervention in this case is neither arbitrary nor unfounded, since, as the appellant acknowledges, a specific objection was raised by some ATE members and which is significant, especially given that, as workers, they are also entitled to elect their representatives.
120. The Government has also included a copy of the judgment issued on 30 December 2015 by the same Court of Appeal in relation to the extraordinary appeal filed by the ATE. In the judgment, the Court of Appeal dismissed the appeal on the grounds that it did not contain a concrete and reasoned critique of the factual and legal grounds of the judgment in question. In its latest communication of February 2017, the Government states that these judgments are final and approved.

The Committee's conclusions

121. *The Committee observes that, in the present case, the complainant organization alleges interference by the National Directorate of Trade Union Associations (DNAS) of the Ministry of Labour, Employment and Social Security (MTESS) in the elections of staff representatives and the internal board members of the Association of State Workers (ATE) in the Ministry of Justice and Human Rights.*
122. *From the information submitted by the complainant organization and by the Government, the Committee observes that: (i) the call for elections of staff representatives and the internal board members of the ATE in the Ministry of Justice and Human Rights, which was issued first in 2013 and again in 2014, was challenged on both occasions by a group of ATE members and internal board candidates on the grounds of alleged irregularities (the call did not comply with an MTESS decision requiring elections to be carried out at each facility or building of the Ministry); (ii) the DNAS upheld both objections and observed that the calls had not been issued in accordance with MTESS Decision No. 459/12, which provides that elections of staff representatives must be carried out at each facility/building of an entity and that both workers who are union members and workers who are not members of any trade union and have not participated in the elections of another national State trade union are eligible to vote in such elections (the Committee observes in this regard that Ministerial Decision No. 459/2012 refers to the election of staff representatives and not to the election of internal board members of the ATE); and (iii) on 23 October 2014, the DNAS ordered the*

ATE to call elections within a ten-day period, in accordance with the abovementioned decision and, on 15 December, noting the lack of compliance with its request, the DNAS decided to appoint an official to call elections of staff representatives and internal board members in the Ministry of Justice and Human Rights.

- 123.** *The Committee notes that, according to the complainant organization, by ordering it to issue a new call for elections of staff representatives and internal board members, the administrative authority committed an act of interference outside its remit, undermining its freedom of association and union autonomy. The Committee also notes that the ATE filed appeals for the reconsideration of the DNAS decisions and that the appeals were rejected by the administrative authority. The Committee notes that, according to the complainant and the Government, after exhausting administrative remedies, the ATE applied to the courts.*
- 124.** *The Committee observes that, according to the information provided by the Government, the Labour Court of Appeal rejected the allegations of interference and upheld the administrative decisions under appeal. The Committee notes that the Government has provided a copy of the judgments handed down by the Court of Appeal, dated 14 October and 30 December 2015, and observes that, in the judgments, the Court: (i) while affirming the need for caution with regard to public authority interference in the internal affairs of trade union associations, in accordance with the provisions of Act No. 23551 and the principles of freedom of association enshrined in Convention No. 87, found that the MTESS acts as an implementing authority of the Act, which gives it, in principle, full supervisory authority, and (ii) found that the intervention in this case is neither arbitrary nor unfounded, since a specific objection was raised by some ATE members and which is significant, especially given that, as workers, they are also entitled to elect their representatives. The Committee notes that, according to the Government, the judgments are final.*
- 125.** *The Committee also observes that, according to publicly available information, on 7 April 2016, the ATE national leadership, together with the general secretaries from the provinces, unanimously approved new rules governing the election of representatives and internal boards of the ATE throughout the country, and observes in particular that article 5 of the rules provides that: "Representatives must be elected in a direct, secret vote by members at the time when the call is published, as well as by workers who are not members of any trade union and who express a desire to participate in the elections, as long as they have not participated in other elections of representatives held by another trade union during the same year. Therefore, workers in the sector who are not members of any trade union must be informed of the call for elections and may register to vote within 10 calendar days, by expressing their desire to the election supervisory body and submitting the necessary paperwork, at the time and place indicated on the call for elections." Moreover, article 6 establishes that: "When the membership of a body exceeds 100, an internal board must also be elected in a direct, secret vote by members at the time when the call is published." In the light of the above-mentioned judgments and the amended ATE statutes, the Committee will not pursue its examination of this case.*

The Committee's recommendation

- 126.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to decide that this case does not call for further examination.*

Complaint against the Government of Brazil presented by

- the National Federation of State Judiciary Workers (FENAJUD)
- Public Services International (PSI) and
- the Union of Judiciary Civil Servants of Maranhão State (SINDJUS-MA)

Allegations: The complainant organizations allege that, in the context of wage disputes, the unions of judiciary employees of the states of Minas Gerais and Maranhão are restricted in the exercise of their freedom of association by the judicial authorities of these states

127. The complaint is contained in two communications from the National Federation of State Judiciary Workers (FENAJUD) of 9 June and 25 September 2017, and in a joint communication from FENAJUD, Public Services International (PSI) and the Union of Judiciary Employees of Maranhão State (SINDJUS-MA) of 6 June 2018.
128. The Government sent observations in a communication of 23 May 2018.
129. Brazil has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but it has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainants' allegations

130. In its initial communication, dated 9 June 2017, FENAJUD alleges that, in the context of a union campaign carried out in mid-2015 for the application of the annual wage adjustment to account for inflation that is provided for in the Federal Constitution, the Union of Judiciary Employees of Minas Gerais State (SERJUSMIG) was prohibited by the Court of Justice of Minas Gerais (TJMG) from exercising its freedom of association and expression. The complainant alleges specifically that: (i) for 2015, the TJMG applied the wage adjustment to account for inflation only to its magistrates, without granting it to other court employees; (ii) in order to ensure the application of this adjustment, which is provided for in the Federal Constitution, SERJUSMIG launched a campaign of protest that included posting on a social network the cover of a widely circulated national magazine that reported the high wages received by the president of the TJMG and the dissemination of a poster that compared Minas Gerais magistrates with sharks; (iii) as a result of this campaign, SERJUSMIG and a number of employees faced various legal actions for defamation (one initiated by the Association of Minas Gerais Magistrates (AMAGIS) and two by the president of the TJMG), as well as administrative disciplinary proceedings; and (iv) by a preliminary decision of 3 August 2015, a Minas Gerais judge ordered SERJUSMIG to withdraw all communications that were the subject of legal action and to refrain from publishing any communications containing pejorative references to the magistrates of Minas Gerais.
131. In respect of the aforementioned judicial decision, the complainant first asserts that the substance of the decision is contrary to freedom of expression, to the principles of freedom of association and to the content of ILO Conventions Nos 87 and 151. In this regard, it states

that: (i) the union's publications remained within the limits of freedom of expression; (ii) as for publishing the wages of the TJMG president, the union simply reproduced the cover of a widely circulated national magazine, which itself disseminated information that was not false (the TJMG president acknowledged the payment, specifying however that it was an occasional and not a monthly payment); and (iii) the right to criticize is inherent to freedom of association and therefore the censorship imposed by the judicial decision constitutes interference in the legitimate trade union activities of SERJUSMIG, contrary to Conventions Nos 87 and 151. To support its argument, the complainant refers to a letter from the administrative law professor Celso Antonio Bandeira de Mello, which defends the actions of SERJUSMIG in the context of the dispute in question as being entirely lawful and constitutional in nature.

132. The complainant states, secondly, that the cases filed against SERJUSMIG's campaign by AMAGIS and the TJMG president should not be examined by the judicial bodies of the State of Minas Gerais, which lack the necessary independence to settle them, given the subject of the dispute and its direct relationship to the interests of the magistrates and to the actions of that state's judicial authority as the employer of the members of SERJUSMIG. The complainant regrets in this regard the lack of a judicial mechanism in Brazil that would allow the parties to obtain a transfer of jurisdiction in such cases.
133. In a second communication, of 25 September 2017, the complainant provides additional information on the initiation of administrative disciplinary proceedings against several judiciary employees of Minas Gerais State (Jamilce Polliana Aguilar Silva, Dagma Geralda Batista, Ana Elisa Bittencourt Fonseca, André Rodrigues Damaceno, Luciene Peracci, Karina Kerley Porto, Josué Ribeiro Roberto, Darci Eduardo Dias and Maria Cristina Fonseca) for disseminating the images mentioned above and for using a photo of the TJMG president as their profile picture in their personal social network accounts; it alleges in this respect that several irregularities occurred. The complainant states in particular that: (i) the initial application of the TJMG president to launch disciplinary proceedings against the aforementioned persons was dismissed; (ii) the TJMG president lodged an administrative appeal against that dismissal, which was submitted to the Judicial Council of the TJMG, even though the president did not have the power to lodge such an appeal; (iii) after several procedural irregularities and, in particular, several changes in the composition of the Judicial Council with a view to obtaining a sufficient majority, on 4 July 2016 the Judicial Council accepted the appeal by majority, giving its approval for disciplinary proceedings to be initiated against four employees (Jamilce Polliana Aguilar Silva, Dagma Geralda Batista, Ana Elisa Bittencourt Fonseca and André Rodrigues Damaceno); (iv) on 7 November 2016, the Judicial Council handed down a similar decision with respect to the other aforementioned employees; and (v) pursuant to these decisions by the Judicial Council, disciplinary proceedings were initiated against the aforementioned employees, who, in turn, submitted a series of legal appeals, in particular ordinary appeals, to the Superior Court of Justice.
134. In a third communication, dated 6 June 2018, FENAJUD, together with the PSI and SINDJUS-MA, present allegations concerning the dispute between the judiciary employees of Maranhão State, represented by SINDJUS-MA, and the Court of Justice of that state, concerning the non-application of the annual wage adjustment to account for inflation that is provided for in the Federal Constitution. The complainant organizations state that, after having exhausted all possibilities for dialogue and having complied with all legal requirements, SINDJUS-MA carried out a strike from October to December 2015. Despite several attempts to reach a compromise, the court refused to allow the work that had been suspended during the strike to be fulfilled through compensatory hours of work, and it docked all pay corresponding to the duration of the strike. The complainant organizations state that this position is contrary to that adopted in 2015 by the Superior Court of Justice, when a strike was carried out by the employees of that court, and that the Superior Court of Justice is of a higher instance than the Court of Justice of Maranhão State. The Superior

Court of Justice, instead of docking the pay corresponding to the strike period, had decided that additional unpaid hours of work should be fulfilled to make up for lost time. The complainant organizations state that this was also the solution proposed in May 2017 in relation to the dispute that is the subject of the present complaint by the National Council of Justice, the supervisory body of the Brazilian judicial system, but that the Court of Justice of Maranhão State ignored this compromise proposal.

135. The complainant organizations further state that, despite the legitimacy of the action, the court declared the strike illegal and imposed a fine of 1.5 million Brazilian reais (BRL) on the union, which amounts to more than the sum of the union's assets and which, if applied, would threaten the very survival of the union. The complainant organizations add that this sentence poses a difficulty in that, in this case, the court handing down the sentence was also the employer of the striking workers.
136. The organizations also claim that the Court of Justice of Maranhão State engages in anti-union acts and practices by refusing to receive union representatives and refusing to enter into negotiations with the union. They claim that, on countless occasions, the applications for a hearing made by SINDJUS-MA were ignored by the *Desembargador Corregedor* (second-instance judge inspector) of that court, in an attempt to discredit SINDJUS-MA as a representative of judiciary employees.

B. The Government's reply

137. In a communication of 23 May 2018, the Government sent its reply to the allegations concerning the situation of SERJUSMIG. The Government states that: (i) AMAGIS claims that it initiated legal proceedings in 2015 on the grounds that the judiciary was the subject of a defamation campaign by SERJUSMIG and that it was for the judicial authority to determine the existence or not of excesses; (ii) the legal proceedings resulted in a preliminary decision by the judge of the 20th Civil Chamber of Belo Horizonte; and (iii) in respect of that decision, SERJUSMIG filed an application with the Federal Supreme Court requesting that the examination of the case be transferred directly to the Federal Supreme Court, a request that was not accepted by the High Court. The Government is submitting the texts of the preliminary decision of 3 August 2015 by the judge of the 20th Civil Chamber of Belo Horizonte and the October 2015 decision by the Federal Supreme Court.

C. The Committee's conclusions

138. *The Committee notes that the present case refers, in the context of campaigns over wages, to allegations that the freedom of association and collective bargaining of trade union organizations of judicial employees is being hampered by the Judicial Authority of Minas Gerais and by the Judicial Authority of Maranhão State.*
139. *With respect to the allegations concerning the Judicial Authority of Minas Gerais State, the Committee notes that the complainant organizations allege that: (i) in order to ensure the application of the wage adjustment to account for inflation that is provided for in the Federal Constitution and which, for 2015, was granted by the Judicial Authority of Minas Gerais only to the magistrates and not to other court employees, SERJUSMIG initiated a campaign of protest; (ii) the campaign included posting on a social network the cover of a widely circulated national magazine that reported the high wages received by the TJMG president and the dissemination of a poster that compared the Minas Gerais magistrates with sharks; (iii) this campaign led to various legal actions for defamation being filed against SERJUSMIG by AMAGIS and by the TJMG president, and administrative disciplinary proceedings against several employees that participated in it; (iv) in a preliminary decision of 3 August 2015, a Minas Gerais judge ordered SERJUSMIG to withdraw all*

communications that were the subject of legal action and to refrain from publishing any communications containing pejorative references to the magistrates of Minas Gerais; and (v) through decisions of August and November 2016, the Judicial Council of the TJMG decided in an irregular manner to initiate disciplinary proceedings against nine employees who participated in the campaign.

140. In relation to the aforementioned preliminary decision by the Belo Horizonte judge, the Committee notes that the complainants allege first of all that the Judicial Authority of Minas Gerais State is acting both as judge and as party, as it is the employer of the judiciary employees who are members of SERJUSMIG, and that the magistrates of the state courts have a direct interest in the defamation proceedings initiated by AMAGIS and the TJMG president; Brazil does not have a mechanism that would allow the court's jurisdiction to be transferred to the Federal Supreme Court in such cases. The Committee also notes in this regard the communication from the Government that contains the October 2015 decision by the Federal Supreme Court of Brazil, following the application filed by SERJUSMIG seeking to ensure that the defamation proceedings initiated against it by AMAGIS would not be examined by the courts of Minas Gerais State, but directly by the Federal Supreme Court itself. The Committee observes that, upon finding that the magistrates of the Court of Justice of Minas Gerais had not formally recused themselves, the Federal Supreme Court considered that, in accordance with the Federal Constitution, the jurisdiction of the Federal Supreme Court was not established in this case.
141. The Committee takes due note of this decision of the Federal Supreme Court. The Committee emphasizes the importance that it has always attached to the fact that disputes and conflicts in trade union matters should be resolved by bodies that are independent of the parties and that, in this regard, judicial bodies usually constitute the greatest guarantee and expression of such independence. The Committee also recalls that it has drawn attention to the importance that should be attached to the principle that not only must justice be done, it must also be seen to be done [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 173]. Observing that, according to the information received, the defamation proceedings against SERJUSMIG have so far given rise only to a preliminary decision, the Committee requests the Government first of all to report on the different options in terms of remedies available to the trade union organization with respect to the substance of the decisions handed down.
142. The Committee on Freedom of Association notes that the complainants further state that the substance of the preliminary decision of 3 August 2015 by the Belo Horizonte judge is contrary to the ILO Conventions and principles on freedom of association, in that: (i) the union's publications remained within the limits of freedom of expression; (ii) the union simply reproduced the cover of a widely circulated national magazine, which itself disseminated information that was not false (the president of the TJMG acknowledged the payment, specifying however that it was an occasional and not a monthly payment); and (iii) the right to criticize is inherent to freedom of association and therefore the censorship imposed by the judicial decision constitutes interference in the legitimate trade union activities of SERJUSMIG.
143. The Committee also takes note of the Government's reply that contains the text of the preliminary decision of 3 August 2015 by the judge of the 20th Civil Chamber of Belo Horizonte. The Committee observes that, in that decision: (i) after recognizing the important role of trade unions of public servants, the judge considered that there was a certain degree of excess in the way in which SERJUSMIG had presented its claims and that an occasional payment received by the TJMG president had been presented by the union as his normal wage; and (ii) considering that the dissemination of the images and the information in question could create irreparable damage, the judge ordered SERJUSMIG to withdraw all

communications that were the subject of legal action and to refrain from publishing any communications containing pejorative references to the magistrates of Minas Gerais.

144. *With regard to the freedom of expression of trade union organizations and its scope, the Committee recalls that its resolution of 1970 concerning trade union rights and their relation to civil liberties places special emphasis on freedom of opinion and expression, which are essential for the normal exercise of trade union rights [see **Compilation**, op. cit., para. 257]. The Committee also recalls that it has considered that the full exercise of trade union rights calls for a free flow of information, opinions and ideas, and to this end workers, employers and their organizations should enjoy freedom of opinion and expression at their meetings, in their publications and in the course of other trade union activities. Nevertheless, in expressing their opinions, these organizations should respect the limits of propriety and refrain from the use of insulting language [see **Compilation**, op. cit., para. 236].*
145. *Noting that, according to the information received, the defamation proceedings filed in 2015 against SERJUSMIG have so far given rise only to a preliminary decision, the Committee trusts that the legal proceedings under way will be completed as soon as possible and that the aforementioned decisions by the Committee will be duly taken into consideration. The Committee requests the Government to keep it informed in this regard.*
146. *Noting that it has not yet received the Government's reply on the administrative disciplinary proceedings that were allegedly brought against nine judiciary employees who participated in SERJUSMIG's campaign over wages, the Committee requests the Government to provide its observations in this regard as soon as possible.*
147. *With regard to the part of the complaint relating to the Judicial Authority of Maranhão, the Committee notes that, in a communication of 6 June 2018, the complainant organizations allege that: (i) with a view to ensuring the application of the wage adjustment to account for inflation that is provided for in the Federal Constitution, and after having exhausted all possibilities for dialogue, SINDJUS-MA carried out a strike from October to December 2015; (ii) despite the fact that the union had complied with all the requirements and even though the Court of Justice of Maranhão State was the employer of the striking workers, that court declared the strike illegal and imposed a fine of BRL1.5 million, an amount which threatens the survival of the union; (iii) without taking into consideration the solution proposed in May 2017 in relation to the dispute that is the subject of this complaint by the National Council of Justice, the supervisory body of the Brazilian judicial system, the Court of Justice refused to allow the work that was suspended during the strike to be fulfilled through additional compensatory hours of work and it docked all pay corresponding to the duration of the strike; and (iv) the Court of Justice of Maranhão State engages in anti-union acts and practices by refusing to receive union representatives and refusing to enter into negotiations with the union, in an attempt to discredit SINDJUS-MA as a representative of judiciary employees.*
148. *Noting that the Government has not provided its observations on the allegations concerning the dispute between SINDJUS-MA and the Judicial Authority of Maranhão State, the Committee requests the Government to send its reply in this regard as soon as possible.*

The Committee's recommendations

149. *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
 - (a) *With regard to the alleged lack of independence of the courts of Minas Gerais State that are examining the defamation cases against the Union of Judiciary*

Employees of Minas Gerais State (SERJUSMIG), the Committee requests the Government to report on the different options in terms of remedies available to that trade union organization with respect to the substance of the decisions handed down.(b) Noting that, according to the information received, the defamation proceedings filed in 2015 against SERJUSMIG have so far given rise only to a preliminary decision, the Committee trusts that the judicial proceedings under way will be completed as soon as possible and that the decisions by the Committee mentioned in the conclusions of this case will be duly taken into consideration. The Committee requests the Government to keep it informed in this respect.

- (c) Noting that it has not yet received the Government's reply on the administrative disciplinary proceedings that were allegedly brought against nine judiciary employees who participated in SERJUSMIG's campaign over wages, the Committee requests the Government to provide its observations in this regard as soon as possible.*
- (d) Noting that the Government has not provided its observations on the allegations concerning the dispute between the Union of Judiciary Employees of Maranhão State (SINDJUS-MA) and the Judicial Authority of Maranhão State, the Committee requests the Government to send its reply in this regard as soon as possible.*

CASE No. 3183

INTERIM REPORT

**Complaint against the Government of Burundi
presented by
the Confederation of Free Trade Unions of Burundi (CSB)**

Allegations: The complainant organization denounces the anti-union dismissal and the suspension of the employment contracts of members of the executive committee of the trade union of the telecommunications enterprise

- 150.** The Committee last examined the complaint brought by the Confederation of Free Trade Unions of Burundi (CSB) at its meeting in June 2018 and on that occasion presented another interim report to the Governing Body [see 386th Report, approved by the Governing Body at its 333rd Session (June 2018), paras 149–159].
- 151.** The Committee has been obliged to postpone its examination of this case twice, in the absence of a reply from the Government. At its meeting in March 2019, the Committee expressed its regret with regard to the continuing lack of cooperation and indicated to the Government that it would present a report on the substance of the case at its next meeting, even if the information or observations requested were not received on time. On 24 May 2019, the Government submitted a communication simply stating that it would provide information on the case.

152. Burundi has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

A. Previous examination of the case

153. In its previous examination of the case, in June 2018, the Committee made the following recommendations [see 386th Report, para. 159]:
- (a) The Committee deeply regrets the fact that the Government has not replied specifically to the allegations, even though it has been invited to do so several times, including through an urgent appeal.
 - (b) The Committee requests the Government to provide copies of the decisions handed down by the courts concerned, as well as a copy of the pending decision from the Supreme Court and invites the complainant to provide any additional information it may have at its disposal. The Committee requests the Government to provide specific information on the situation of Messrs Alain Christophe Irakiza, Martin Floris Nahimana, Bernard Mdikabandi and Ms Bégnigne Nahimana, and that of Mr Alexis Bizimana and, as appropriate, to take the necessary remedial measures, including reinstatement.
 - (c) The Committee again urges the Government to ask the employers' organizations concerned, if they so desire, to provide information so that it can be aware of their version of events and know the views of the enterprise concerned on the pending issues.

B. The Committee's conclusions

154. *The Committee deplores that, despite the time that has elapsed since the presentation of the complaint, the Government has not provided the information it is expected to provide in response to the allegations made by the complainant organization and in response to the Committee's recommendations, even though it has been asked to do so several times, including through urgent appeals, and even though a meeting to that effect was held, at the Committee's request, with the Government delegation during the 107th Session of the International Labour Conference (May–June 2018). The Committee urges the Government to be more cooperative in the future.*
155. *The Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to promote respect for trade union rights in law and in practice. The Committee is confident that, while this procedure protects governments against unreasonable accusations, they must recognize the importance of formulating, for objective examination, detailed replies concerning allegations brought against them [see First Report of the Committee, 1952, para. 31].*
156. *The Committee recalls that the allegations of the CSB relate to the suspension and dismissal, in 2015, of trade union representatives of the SYTCOM trade union in the context of the merger of two telecommunications enterprises in Burundi, which resulted in a staff reduction process. The individuals concerned by the suspension measure are Mr Alain Christophe Irakiza, Mr Martin Floris Nahimana, Mr Bernard Mdikabandi and Ms Bégnigne Nahimana. According to the complainant organization, these suspensions follow the unfair dismissal of another member of the SYTCOM executive committee, Mr Alexis Bizimana.*
157. *The Committee deplores that the Government has not been in a position to provide copies of the decisions handed down by the Labour Court and the Court of Appeal, which ruled in favour of the workers concerned, nor of the Supreme Court decision which it expects may be handed down. The Committee regrets that the complainant organization has also failed*

to provide additional information in support of its complaint and can only urge the Government to: (i) provide copies of the decisions handed down by the courts concerned, as well as a copy of the Supreme Court decision as soon as handed down; and (ii) provide specific information on the situation of Mr Alain Christophe Irakiza, Mr Martin Floris Nahimana, Mr Bernard Mdikabandi and Ms Bégnigne Nahimana, and that of Mr Alexis Bizimana and, as appropriate, to take the necessary remedial measures, including reinstatement. The Committee requests the complainant organization to provide any additional information that it may have at its disposal.

The Committee's recommendations

158. In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:

- (a) The Committee deplores that, despite the time that has elapsed since the presentation of the complaint, the Government has not provided the information it is expected to provide in response to the allegations made by the complainant organization and in response to the Committee's recommendations, even though it has been asked to do so several times, including through urgent appeals, and even though a meeting to that effect was held, at the Committee's request, with the Government delegation during the 107th Session of the International Labour Conference (May–June 2018). The Committee urges the Government to be more cooperative in the future.*
- (b) In these circumstances, the Committee can only urge the Government to:*
 - (i) provide copies of the decisions handed down by the courts concerned, as well as a copy of the Supreme Court decision as soon as handed down; and*
 - (ii) provide specific information on the situation of Mr Alain Christophe Irakiza, Mr Martin Floris Nahimana, Mr Bernard Mdikabandi and Ms Bégnigne Nahimana, and that of Mr Alexis Bizimana and, as appropriate, to take the necessary remedial measures, including reinstatement. The Committee requests the complainant organization to provide any additional information that it may have at its disposal.*
- (c) The Committee once again urges the Government to ask the employers' organizations concerned, if they so desire, to provide information so that it can be aware of their version of events and know the views of the enterprise concerned on the pending issues.*
- (d) The Committee invites the Government to avail itself of the technical assistance of the Office, if it so desires, in order to determine the appropriate measures to address these recommendations effectively.*

CASE NO. 3299

DEFINITIVE REPORT

**Complaint against the Government of Chile
presented by**

- **The National Association of Customs Officers of Chile (ANFACH)**
- **The National Association of Public Servants (ANEF) and**
- **The Amalgamated Workers' Union of Chile (CUT)**

Allegations: The complainant organizations allege government non-compliance with a memorandum of understanding on strengthening the National Customs Service (SNA), as well as acts of repression in punishment for collective work stoppages and protests and failure to use social dialogue mechanisms to handle the dispute

- 159.** The complaint is contained in a communication from the National Association of Customs Officers of Chile (ANFACH), the National Association of Public Servants (ANEF) and the Amalgamated Workers' Union of Chile (CUT) dated 19 June 2017. Further information was sent subsequently on 27 July 2017.
- 160.** The Government sent its observations in communications dated 23 January and 30 October 2018.
- 161.** Chile has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainants' allegations

- 162.** In their communications dated 19 June and 27 July 2017, ANFACH, ANEF and CUT indicate that ANFACH entered into a memorandum of understanding with the Government on 23 November 2016 on strengthening the National Customs Service (SNA). The signatories undertook to draft a bill to modernize the SNA and improve the working conditions of employees, by recruiting more staff, gradually integrating contractual workers into the workforce and holding internal competitions to fill vacant posts, giving priority to employee length of service. They also agreed on a timetable of action and the establishment of negotiating tables to reach agreement on specific aspects of the memorandum of agreement.
- 163.** The complainants indicate that, on 4 May 2017, ANFACH submitted a proposal to the Government specifically on staffing levels and employee classification for submission to Congress and that, on 22 May, the Government submitted a counter-proposal that differed completely from the guidelines stipulated in the memorandum of understanding, and indicated that this was not open for amendment. The complainants indicate that the Government's proposal ignores the fact that the classification should be carried out in one single process, limits the inclusion of employees who have met the agreed length-of-service requirement (two years from 20 May 2015), cancels the internal promotion competitions

agreed for 2019 and generally removes length of service as the determining criterion for grade improvements and competitions.

164. The complainants indicate that, due to the Government's refusal to adhere to the terms of the above-mentioned memorandum of understanding, ANFACH's national executive committee decided to call an indefinite strike from 24 May 2017, with emergency teams in place to carry out any urgent work whose interruption could cause irreparable damage to the country. The complainants' state that during the work stoppage the circulation of people, vehicles and cargo was at no time held up, but was much slower and there was strict adherence to the regulations.
165. The complainants allege that, notwithstanding the above, during the work stoppage the following acts of violence and irregularities occurred: (i) three union officials and one member of ANFACH who were demonstrating peacefully in the Arturo Merino Benítez airport on 29 May 2017 were subjected to violent repression, evicted by the special police forces and detained for four hours; (ii) on 26 May 2017, in the town of Iquique, the special police forces ordered the union members who were carrying out essential duties to leave and held the demonstrators for nearly three hours, who suffered physical and psychological violence at the hands of the police; (iii) On 30 May, the customs director of the Arica and Parinacota region ordered trusted and new employees and police staff to cover the posts of the strikers; and (iv) on 1 June 2017, the manager on duty at the Los Andes customs facility at the Los Libertadores Border Complex, who was a member of ANFACH, was notified that he was being relieved of his duties by the customs administrator, for the sole reason that he had taken part in the strike.
166. The complainants indicate that, on 2 June 2017, after ANEF asked the President of the Republic to re-establish dialogue and to halt the use of police forces, the Government publicly stated that it was withdrawing the proposal that had led to the strike action and called for dialogue to resume. As a result, the strike was immediately called off. The complainants indicate that they requested the Government to abide by the original agreement and to ensure that there would be no reprisals of any kind against those who had taken part in the work stoppage. The complainants stated that, while there has been partial compliance with the first request, given that efforts are ongoing with the Government on the content of the proposal that will be submitted to National Congress, the second request on the other hand was not accepted and instead the Government implemented an unacceptably repressive policy.
167. The complainants allege that more than 500 workers had their pay deducted, including almost all ANFACH union officials, and that SNA senior management was instructed to make a negative entry in the employment records of some employees, which is an unjustified reprisal considering that it is a sanction intended to punish poor management and not for taking part in a statutory strike. The complainants also allege that, on 21 June 2017, a division of SNA headquarters informed its employees that it would not be renewing the contracts of the contractual workers who took part in the strike action. With regard to those threats, the complainants have provided a copy of the email sent on 21 June 2017 by Ms Lidia Hernández Villegas, Head of the Primary Control Point subdivision, addressed to all workers in primary control points in the metropolitan region, which states: "Dear colleagues of the Primary Control Point subdivision, as informed verbally by myself yesterday, 20 June 2017, I am informing you again in writing of the instructions issued by the Service Directorate regarding the new measures to be implemented in work stoppages in the future. Employees may take part in a stoppage, but days not worked will be deducted from their pay and a negative entry will be made in their employment records; contractual workers who take part in a stoppage will not have their contracts renewed."

168. Lastly, the complainants allege that the Government failed to use social dialogue mechanisms to handle the above-mentioned dispute. In particular, they consider that it did not observe Articles 7 and 8 of Convention No. 151, ratified by Chile, which require the adoption of machinery for negotiation or other methods to allow representatives of public employees to participate in the determination of terms and conditions of employment, as well as mechanisms to settle disputes pertaining to the determination of such terms and conditions that ensure the confidence of the parties involved.

B. The Government's reply

169. In its communications dated 23 January and 30 October 2018, the Government indicates that the SNA is a public service responsible for monitoring and controlling the passage of goods via the coasts, borders and airports of Chile, for supervising international traffic for the purpose of collecting taxes on imports and exports and generating international traffic statistics. The Government also indicates that the SNA is subject to the authority of the Office of the Comptroller General and that the latter has issued a number of opinions to the effect that it is the exclusive right of the highest authority of a service to instruct its own staff on where they will be located, deciding at its discretion how its employees will be allocated and placed, depending on the needs of the department they manage.
170. The Government indicates that, in a communication dated 23 May 2017, ANFACH called a national strike, involving a total and indefinite work stoppage, from 24 May, during which no cargo or persons passing through customs would be handled. Between 24 May and 2 June 2017, a work stoppage called by ANFACH took place, in which a total of 502 employees took part nationwide, which had a serious impact on the continuity of the service's work and on access by nationals and foreigners to the services provided by the organization, affecting in particular the transit of persons and goods in bordering countries. The Government indicates that, in order to provide the most important services for the population, senior management took emergency measures so as to offer as many essential services as possible, using staff not involved in the work stoppage or seconded from other departments.
171. With regard to the alleged non-compliance with the memorandum of understanding entered into on 23 November 2016, which in ANFACH's view violated Article 7 of Convention No. 151, the Government states that, once the strike action was over, the Government resumed negotiations with ANFACH. A negotiating table headed by the office of the Treasury Under-Secretary is currently in place with a view to reaching consensus on the outstanding issues of the memorandum of understanding. The executive branch is of the view that, if properly implemented, it will result in a major modernization of the SNA and lead not only to improving the working conditions of its employees but also to a more efficient service to meet the needs of citizens. According to the Government, this demonstrates its willingness to establish procedures for determining terms and conditions of employment as provided in Article 7 of the Convention.
172. The Government reports that ANFACH filed an application for protection with the Valparaíso appeals court against the pay deductions of 501 employees because of the work stoppage from 24 May to 2 June 2017. The Government indicates that, although the lower court rejected the application, ANFACH filed an appeal and, on 11 January 2018, the Supreme Court overturned the lower court's ruling and ultimately accepted the application for protection filed by ANFACH. The Government has provided a copy of the Supreme Court's ruling, which emphasizes that the deductions were manifestly unlawful, given that no prior investigation had been carried out to determine the precise identity of those who had taken part in the work stoppage. The Government indicates that, as a result of the ruling, the amounts deducted were repaid to the applicants on 31 January 2018.

- 173.** The Government further reports that two SNA employees, who were ANFACH members, filed an application for protection with the Valparaíso appeals court against the negative entries made in their employment records. It indicates that the court's ruling, which was in favour of the SNA's position, was the subject of an appeal before the Supreme Court, which upheld the original ruling. The Government has attached a copy of the ruling dated 20 September 2017, which indicated that the negative entries were made because both employees, who hold management positions, took part in the work stoppage, despite reporting to their place of work and signing the attendance record. They did not carry out their management duties between 25 May and 1 June 2017. These officials failed to perform their duties in a constant and regular manner, thereby disrupting the normal functioning of the administration, which, by default, can be considered as reprehensible conduct or performance by the officials. It further indicates that there are no grounds to support clearly, precisely, seriously and unequivocally that the negative entries can be deemed to be undue discrimination or exerting physical force or psychological pressure with the sole aim of encouraging or discouraging union membership or withdrawal.
- 174.** The Government also indicates that ANFACH's national executive committee filed an application for protection of labour rights for anti-union practices with the Valparaíso Labour Court, on behalf of its members, alleging persecution of employees who took part in the strike action, negative entries in employment records, arbitrary pay deductions and discrimination against contractual workers who took part in the strike action, by threatening them with mass dismissals. The Government has provided a copy of the ruling handed down on 26 May 2018, which indicates that the court: (i) accepted the claim by the SNA that the application for protection of labour rights relating to the negative entries in employment records should be declared inadmissible, on the grounds that these had already been the subject to an application for protection; and (ii) rejected the request for protection of labour rights relating to anti-union practices. In particular, with regard to the alleged threats to the employment stability of the contractual workers and to the email sent on 21 June 2017 by Ms Lidia Hernández Villegas, Head of the Primary Control Point subdivision, the court found that the email in question could not be deemed a threat to freedom of association or to the right to organize because it did not emanate from the national director and neither has it been proven that it was sent on his orders. It has not been proven that the email was addressed solely to union officials or members of ANFACH, or that the measures would only apply to its members or officials, and thus it is impossible to conclude that it denotes a voluntary, precise and intentional act aimed at discouraging employees from joining or encouraging their withdrawal from ANFACH. The ruling also rejected the claim of other alleged anti-union practices that are not the subject of this complaint.
- 175.** With regard to the above-mentioned email, the Government indicates that there was no formal order or express instruction issued by the SNA specifying the non-renewal of the contracts of the contractual workers who took part in the strike action called by ANFACH. The Government states that, in any case, article 19(16) of the Constitution stipulates that public servants cannot take part in strikes because they also have a duty to meet the needs of the public on a continuing, permanent basis, as laid down in section 3 of the Constitutional Act establishing the general principles of state administration (Act No. 18575). The Government indicates that, in this connection, section 84(i) of the Administrative Statute prohibits public servants from organizing, promoting, or taking part in strikes and the total or partial interruption or stoppage of work, arbitrarily detaining persons and engaging in any other acts that disrupt the normal functioning of state administration bodies. In the Government's view, in light of the foregoing, it may be concluded that participation in such activities can, in law, constitute a precedent, meaning that, if deemed appropriate, a contract may not be renewed. Such a decision must be carried out in accordance with the relevant statutory norms and be subject to the issuance of an administrative act establishing the grounds supporting it.

176. The Government indicates that the ruling issued on 26 May 2018 by the Valparaíso Labour Court was the subject of an appeal for annulment filed by the applicant with the Valparaíso appeals court on 11 June 2018, which was ultimately rejected on 20 July 2018 and the original ruling executed on 9 August 2018.

C. The Committee's conclusions

177. *The Committee observes that in the present case the complainants allege government non-compliance with a memorandum of understanding on strengthening the SNA, as well as acts of repression in punishment for collective work stoppages and protests and failure to use social dialogue mechanisms to handle the dispute.*
178. *The Committee notes that the complainants allege that the Government failed to comply with the memorandum of understanding that had been concluded with ANFACH on 23 November 2016, in which they had agreed that a bill would be drafted aimed at modernizing the SNA and improving the working conditions of employees. More specifically, they allege that, following the signing of the memorandum of understanding, ANFACH submitted a proposal to the Government specifically on staffing levels and employee classification, which was in line with what had been agreed in the memorandum of understanding, and that the Government submitted a counter-proposal that differed completely from what had been agreed in the memorandum of understanding. As a result, ANFACH called a work stoppage from 24 May 2017, in which around 500 employees took part nationwide, and which ended on 2 June 2017 when the Government announced that it was withdrawing the proposal that had led to the strike action, and called for dialogue to resume.*
179. *The Committee notes that, according to the complainants and the Government, once the strike action was over, the Government resumed negotiations with ANFACH and a negotiating table headed by the office of the Treasury Under-Secretary is currently in place with a view to reaching consensus on the outstanding issues of the memorandum of understanding. The Committee also notes that, according to information published recently by ANFACH, these negotiations led to a consensus being reached in January 2019 on the content of the bill on strengthening the SNA. The bill was recently unanimously adopted in the Chamber of Deputies and the Senate Treasury Committee and will now pass to the Upper House.*
180. *The Committee further notes that the complainants allege that during the peaceful demonstrations acts of violence occurred (police repression and detention by the police) and strikers were moved. In this regard, the Committee notes that the Government indicates that: (i) the work stoppage had a serious impact on the SNA's work, affecting in particular the transit of persons and goods in neighbouring countries; and (ii) in order to provide the most important services, emergency measures were taken so as to offer as many essential services as possible, using staff not involved in the work stoppage or seconded from other departments. The Committee observes that, in its reply, the Government does not respond directly to the allegations of police repression, but nevertheless does not contest that it was a peaceful demonstration. In this connection, the Committee recalls that the authorities should resort to the use of force only in situations where law and order is seriously threatened. The intervention of the forces of order should be in due proportion to the danger to law and order that the authorities are attempting to control and governments should take measures to ensure that the competent authorities receive adequate instructions so as to eliminate the danger entailed by the use of excessive violence when controlling demonstrations which might result in a disturbance of the peace [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 217].*
181. *With regard to the allegation that an ANFACH member, the manager on duty at the Los Andes customs facility at the Los Libertadores Border Complex was relieved of his duties*

for taking part in the strike, the Committee observes that, while the Government has not sent its observations in this regard, neither have the complainants provided any information that would lead the Committee to conclude that the employee was relieved of his duties because of his union membership or for taking part in the work stoppage. The Committee will therefore not pursue its examination of this allegation.

- 182.** *The Committee notes that, according to the Government, the allegations relating to pay reductions during the strike, negative entries in the employment records of two employees and threats of dismissals against the contractual workers who took part in the strike action were the subject of several legal actions, on which the following rulings have already been handed down: (i) the ruling on the application for protection of labour rights regarding the pay deductions found in favour of ANFACH (because the identity of those who had taken part in the strike had not been determined) and, as a result of the ruling, the amounts deducted were repaid to the applicants on 31 January 2018; and (ii) the rulings on the negative entries in the employment records of two employees found in favour of the SNA on the grounds that the employees who took part in the work stoppage held management positions.*
- 183.** *The Committee also notes that, in a claim of anti-union practices filed by ANFACH, the court found that the email sent by the head of a subdivision, which stated that the contractual workers who had taken part in the strike would not have their contracts renewed, did not constitute a threat to freedom of association because the email had not been issued by the national director and was not addressed to ANFACH or its members. The Committee further notes that the Government indicates that: (i) according to the Constitution and the Constitutional Act establishing the general principles of state administration (Act No. 18575), public servants are prohibited from taking part in strikes and have a duty to meet the needs of the public on a continuing, permanent basis; and (ii) in the light of the foregoing, it may be concluded that the participation of employees in such activities can, in law, constitute a precedent, meaning that, if deemed appropriate, a contract may not be renewed. Such a decision must be carried out in accordance with the relevant statutory norms.*
- 184.** *In this connection, the Committee recalls previous decisions that the prohibition of the right to strike of customs officers, who are public servants exercising authority in the name of the State, is not contrary to the principles of freedom of association [see **Compilation**, op. cit., para. 833]. The Committee observes, however, that in this precise case ANFACH did exercise the right to strike. It further observes that, even though the email in question may have had an intimidating effect, in the present case the complainants have not alleged that the contract of any contractual worker who took part in the strike has not been renewed.*
- 185.** *In the light of the above rulings, as well as of the information published recently by ANFACH indicating that, as a result of the dialogue with the Government, in January 2019 they reached an agreement on the bill on strengthening the SNA, and that the bill was recently unanimously adopted in the Chamber of Deputies and the Senate Treasury Committee and will now pass to the Upper House, the Committee will not pursue the examination of this case.*

The Committee's recommendation

- 186.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to decide that this case does not call for further examination.*

CASE NO. 3301

DEFINITIVE REPORT

**Complaint against the Government of Chile
presented by**

- **Workers’ Trade Union No. 3 of the El Mercurio S.A.
Newspaper Enterprise and**
- **the Single Confederation of Trade Unions of Chile (CUT)**

***Allegations: The complainant organizations
report anti-union dismissals, the suspension of
the collective bargaining process and
non-compliance with the collective agreement***

- 187.** The complaint is contained in a communication from the Workers’ Trade Union No. 3 of the El Mercurio S.A. newspaper enterprise dated 18 May 2017. Subsequently, on 14 September 2017, the Single Confederation of Trade Unions of Chile (CUT) sent a communication supporting the complaint.
- 188.** The Government sent its observations by communications of 30 October 2018 and 4 April 2019.
- 189.** Chile has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants’ allegations

- 190.** In their communication of 18 May 2017, the complainants indicate that on 27 February 2017 the El Mercurio S.A. newspaper enterprise (“the enterprise”), the largest print media enterprise in the country, notified 122 workers from the production area that their contracts would be terminated. Of those workers, 104 were members of Trade Union No. 3, who represent more than 85 per cent of the laid-off workers and 51 per cent of the union’s 204 members. The complainants indicate that the collective agreement in force with the said trade union was due to expire on 30 May 2017 and that the dismissals were intended to instil fear in the workers and prevent any possible work stoppages during the collective bargaining process.
- 191.** The complainants indicate that, although the enterprise relied on article 161 of the Labour Code (enterprise requirements) to justify the dismissals – more specifically the decision to outsource the printing of products by contracting a printing works that allegedly provides a service at lower cost and with higher quality – the printing works is one that was set up recently and has no other clients, and that it is untrue that it has greater efficiency and quality standards. The complainants indicate that the notice letters sent by the enterprise to the workers do not specify the grounds for the decision and that the dismissals are therefore wrongful. The complainants further allege that the dismissals were notified in an intimidating manner, as the security personnel identified the dismissed workers from photographs and prevented them from entering the premises. In addition, they indicate that more than half of the workers lodged complaints on the grounds of anti-union practices and sought to have the dismissals declared null and void.

192. Furthermore, the complainants indicate that the legal time limit to present the draft text for the new collective agreement was due to expire on 15 April 2017, and Trade Union No. 3 therefore submitted its draft on 13 April; one hour later, it received an email from the enterprise saying that bargaining was suspended because on 31 March the enterprise had submitted a request to the Labour Directorate to designate the minimum services and emergency teams in the event of a strike, in accordance with the provisions of Act No. 20940 on the modernization of the labour relations system. The complainants indicate that, under that Act, prior to a collective bargaining process, the parties must determine and designate the minimum services and the corresponding emergency teams; to that end, the employer must make a proposal to the unions, who have a time limit to respond and reach an agreement. A collective bargaining process cannot be started in that period.
193. The complainants also indicate that even if the enterprise's obligation under the Labour Code to make a proposal to the union on the minimum services is not indicated explicitly in transitional article 3 of Act No. 20940, that article provides that the minimum services must be agreed by the enterprise and the trade unions. The complainants indicate that, in the present case, the enterprise requested the designation of the minimum services, arguing that there was no agreement with the union, but that the reason why there was no agreement was that the enterprise had not made any proposal to the union. The complainants also state that the Labour Directorate should not have admitted the enterprise's request, as by so doing, it allowed the enterprise to unilaterally suspend the collective bargaining. They indicate that Trade Union No. 3 requested the National Labour Director to clarify that the intention of the Act is that the employer should make a proposal to the unions concerning the arrangements for minimum services and that, if it does not do so, the request to designate minimum services must be rejected.
194. Moreover, the complainants allege that the enterprise systematically failed to comply with the collective agreement made with Trade Union No. 3, which was signed on 1 October 2013 and was in force until 31 May 2017. They indicate that, despite the repeated letters sent by the union and the various meetings that were held, on 20 October 2016 the executive board of the union submitted a request for mediation to the National Director of Labour in relation to the non-compliance with the collective agreement and the enterprise declined to attend the meetings and participate in the voluntary mediation.

B. The Government's reply

195. In its communications of 30 October 2018 and 4 April 2019, the Government sent its observations as well as those of the enterprise. The enterprise indicates that its main line of business is creating newspaper content and that its funding mainly comes from advertising revenue. It indicates that, in recent years, the media industry has been experiencing financial difficulties and that the press specifically has been seriously affected by the diversification of advertising platforms, moving away from traditional newspapers and print magazines to new and multiple channels for displaying advertisements. As from 2012, the enterprise had seen a significant drop in revenue and in that context had adopted a series of measures with a view to reducing costs and maintaining the sustainability of the business. The enterprise indicates that between 2011 and 2016 its revenue dropped by 31.2 per cent, despite it having implemented various types of measures, and that in 2015 and 2016, it underwent restructuring which meant that more than 130 people lost their job.
196. The enterprise states that the sustained loss of advertising revenue, in a market characterized by the emergence of new advertising platforms, resulted in the enterprise taking a decision that it had been contemplating for several years: to improve the printing infrastructure, which meant that it had to decide between making a large investment in new equipment or beginning a process of gradually outsourcing the printing. The enterprise indicates that it received advice from a renowned investment bank and that, in view of the lack of other

newspaper printing presses in the country except for one belonging to a competitor, it was the investment bank, through one of its subsidiaries, that in 2016 began the process of setting up a printing works. On 27 December 2016, the enterprise signed a service contract with that printing works, which began to operate two months later. The enterprise indicates that the decision to outsource part of the printing of its products has been positive, as the print quality is higher and it has created cost efficiencies. The enterprise clarifies that it does not own the printing works.

197. The enterprise states that the decision to outsource part of its production operations was made on economic grounds and meant that an internal restructuring was necessary, particularly the area of production; as there were no other services or areas available to which the workers affected could be reassigned, it was necessary to downsize the production area. It indicates that, on the same day that the external printing works began operations, on 27 February 2017, it notified 122 workers in the production area that they were being laid off. The stated grounds for the layoffs were “Requirements of the undertaking, establishment or service”, pursuant to article 161 of the Labour Code, and the letters of notice sent to the workers explained thoroughly the economic reasons that had obligated the enterprise to reduce costs and outsource part of the printing of its products and, consequently, to lay off the workers from the production area.
198. The enterprise indicates that, in January 2017, before the layoffs had taken place, it had met with Trade Union No. 3 to discuss matters on which they agree for the new collective agreement and that the president of the union voiced concern that there would be layoffs among his union’s members, as he had information about the outsourcing of the newspaper printing. The enterprise indicates that it made a proposal to the union to sign a new collective agreement, which included a fund for the laid-off workers for a period of four months after the signature of the collective agreement. The enterprise indicates that the demands made by the union far exceeded the offer that it had made, and hence the negotiation was unsuccessful.
199. The enterprise also indicates that on 27 February, the day on which the workers were notified of the termination of their contracts, it provided facilities to receive the workers and carry out the related administrative tasks, and met with the executive boards of the trade unions whose members were affected and explained that, with a view to ending the contractual relationship in a sound manner, it would offer those workers who were in agreement with the contract termination an additional financial incentive over and above what it was legally obligated to offer, advice on social security and a plan for finding a new job. The enterprise indicates that at that meeting, one of the union officials asked whether the incentive was negotiable and, when the enterprise replied that it was prepared to consider alternatives, the trade union said that it would send a proposal that evening, which ultimately did not happen.
200. The enterprise indicates that a total of 44 workers opted to sign settlements and receive the benefits to which they were entitled under the law and the collective agreements in force, as well as the additional incentives; a further 78 workers included in the documents that they reserved the right to subsequently take legal action. The Government informs the Committee that a decision has already been handed down in some of those proceedings, that in some proceedings a conciliation agreement has been reached, and that in other proceedings either there has not yet been a decision or an action for annulment has been brought which has not yet been resolved. The Government indicates that in all of the court cases brought by the union in which a decision has been handed down, for a total of 41 workers, the layoffs were found to be lawful and the complaints of infringement of freedom of association were dismissed.
201. The Government provided a copy of a number of decisions in which the labour courts noted that the outsourcing process had begun well before the collective bargaining process, that

production was being outsourced with a view to increasing competitiveness and that it did not aim to weaken the union, either directly or indirectly, also taking into account the fact that the enterprise has high levels of unionization among all categories of employees. Furthermore, they considered that the decision to lay off the workers mainly from the production area does not appear to be an arbitrary one nor intended to weaken the union directly or indirectly, in that the enterprise was unaware of the union membership of the workers affected – although it could assume a high level of unionization in the area – and that it could not be demonstrated that the union members were laid off with the deliberate intent of weakening the union either directly or indirectly in view of an imminent collective bargaining process.

202. With regard to the request to designate the minimum services and emergency teams, the enterprise indicates that transitional article 3 of Act No. 20940, which was published on 8 September 2016 and has been in force since 1 April 2017, provides that, as from the publication of the Act, enterprises and trade union organizations may designate the minimum services and emergency teams by common accord, and that where collective bargaining is due to commence within two months of the entry into force of the Act and there is no agreement on the designation of the minimum services and emergency teams, the employer must notify the competent Regional Labour Directorate within a time limit of 90 days starting from the fourth month following the publication of the Act. The enterprise indicates that the negotiation with the union was due to begin between April and May 2017, and therefore the request to designate minimum services was due to be submitted by 31 March 2017, on which date the enterprise submitted the request to the Labour Directorate.
203. The Government indicates that the right to request the designation of minimum services and emergency teams must be exercised with strict adherence to the principle of good faith prevailing throughout the collective bargaining process, such that it is not possible for the administrative authority to determine whether the exercise of that right constitutes an anti-union practice, because only the courts may characterize conduct as an anti-union practice. The foregoing is without prejudice to the responsibility of the Labour Directorate to report to the competent court any incidents it considers to constitute anti-union or unfair practices so that it may examine them. The Government adds that the entry into force of the Act may have given rise to some situations requiring adjustments through the administrative and/or legislative channels, all of which is currently under review with a view to creating greater certainty on the matter.
204. The Government indicates that on 15 May 2017, the Oriente Regional Labour Directorate declared the work of security guards to be the only minimum service, against which the enterprise lodged a hierarchical appeal, which was rejected. The Government also indicates that the designation of the minimum service allowed the enterprise and the trade union to proceed with their negotiations and that on 5 September 2017 the current collective agreement was signed, which is in force until 9 September 2020.
205. With regard to the purported “conscious, repeated and systematic” non-compliance with the collective agreement signed on 1 October 2013, the enterprise emphasizes that the complainant organizations did not specify which clauses the enterprise had allegedly violated and the nature of the alleged non-compliance. The enterprise indicates that the union sought voluntary mediation before the Labour Directorate to discuss provisions of the collective agreement in the light of various differences in opinion on the application of certain benefits and that the enterprise agreed to participate in that process. It indicates that it met with an official of the Labour Directorate and coordinated the submission of information concerning the matters that the union wished to address. However, the day before the meeting that was scheduled on 5 January 2017, the Labour Directorate informed the enterprise that the trade union organization had decided to unilaterally change the agenda

of the mediation and that it wished to address other topics; consequently, as it was a voluntary process, the enterprise decided not to continue with the mediation.

C. The Committee's conclusions

- 206.** *The Committee observes that in the present case, the complainant organizations report anti-union dismissals, and the suspension of the collective bargaining process and non-compliance with the collective agreement by the largest print media enterprise in the country.*
- 207.** *The Committee notes that the complainants indicate that on 27 February 2017, the enterprise dismissed 122 workers from the production area, 104 of whom were members of Trade Union No. 3 of the enterprise (51 per cent of its 204 members), and allege that, although the enterprise justified the dismissals on economic grounds and on the basis of its decision to outsource part of the printing of the products to an external printing works that allegedly provided a lower-cost and higher-quality service, the dismissals were intended to instil fear in the workers and prevent any work stoppages during the collective bargaining process that was due to take place in the subsequent months.*
- 208.** *In this respect, the Committee notes that the enterprise indicates that: (i) its revenue has fallen by 31.2 per cent in recent years and restructuring has led to more than 130 people losing their job; (ii) the sustained loss of advertising revenue led to the enterprise deciding to outsource part of the printing of its products, which involved an internal restructuring that particularly affected the production area, as there were no other areas to which the workers concerned could be reassigned; and (iii) with a view to concluding the contractual relationship in an appropriate manner, the enterprise offered those who were in agreement with the contract termination a financial incentive over and above what it was legally obligated to offer, advice on social security and a plan for finding a new job.*
- 209.** *The Committee also notes that the complainants and the Government both indicate that more than half of the laid-off workers lodged complaints on the grounds of anti-union practices and sought to have the dismissals declared null and void, and that, according to the Government, decisions have been handed down in a number of proceedings, a conciliation agreement has been reached in some others, and in other proceedings either there has not yet been a decision or an action for annulment has been brought which has not yet been resolved. The Government also informs the Committee that in all of the court cases brought by the union in which a decision has been handed down, for a total of 41 workers, the layoffs were found to be lawful and the complaints of infringement of freedom of association were dismissed. The courts found that the outsourcing process had begun well before the collective bargaining process, that production was being outsourced with a view to increasing competitiveness and that it did not aim to weaken the union, either directly or indirectly, also taking account of the fact that the enterprise has high levels of unionization among all categories of employees.*
- 210.** *While duly noting the decisions and the fact that there are still legal proceedings ongoing, the Committee observes that, without prejudice to the financial reasons which may have underpinned the outsourcing, and without prejudice to the high level of unionization among the enterprise's workers, the layoffs almost exclusively affected unionized workers and the restructuring had a direct impact on Trade Union No. 3 of the enterprise. However, the foregoing does not permit reaching the conclusion that the workers were dismissed because of their union membership or their participation in legitimate union activities. In this particular case, the Committee recalls the importance of consulting with trade unions when elaborating restructuring programmes, since they have a fundamental role to play in ensuring that programmes of this nature have the least possible effect on workers [see*

Compilation of decisions of the Committee on Freedom of Association, sixth edition, 2018, para. 1557].

211. *The Committee notes that the complainants also allege that, without prior consultation with Trade Union No. 3, the enterprise requested the Labour Directorate to designate the minimum services and emergency teams, which resulted in a unilateral suspension of the collective bargaining process. In this regard, the Committee notes that the enterprise indicates that although Act No. 20940, which was published on 8 September 2016 and has been in force since 1 April 2017, indicates that enterprises and trade union organizations may designate the minimum services and emergency teams by common accord, transitional article 3 of the Act indicates that, where collective bargaining is due to commence within two months of the entry into force of the Act, the employer must make an application to the Regional Labour Directorate within a time limit of ninety days beginning from the fourth month following the publication of the Act. The enterprise indicates that collective bargaining with the union was due to begin between April and May 2017, and therefore the request for the designation of minimum services was due to be submitted by 31 March 2017, on which date the enterprise submitted the request to the Labour Directorate.*
212. *The Committee also notes that the Government adds that: (i) the right to request the designation of minimum services and emergency teams must be exercised with strict adherence to the principle of good faith; (ii) in a decision issued in November 2017, the Labour Directorate determined that the employer's inertia in approaching its counterpart to seek an agreement on designating the minimum services and emergency teams cannot be considered to be a flaw that invalidates the submitted request; (iii) the entry into force of Act No. 20940 might have given rise to situations requiring adjustments through the administrative and/or legislative channels, all of which is currently under review with a view to creating greater certainty on the matter; and (iv) on 15 May 2017, the Labour Directorate declared the work of security guards to be the only minimum service, which allowed the parties to proceed with their negotiations, resulting in the signature of the current collective agreement on 5 September 2017, which is valid until 9 September 2020.*
213. *The Committee observes that the matter concerning the request for the designation of minimum services and emergency teams has its origins in the provisions of transitional article 3 of Act No. 20940, which applied only to collective bargaining processes that were due to begin within the first six months of the entry into force of the Act, that is, until October 2017. Furthermore, taking into account the information from the Government that the enterprise and the union signed a collective agreement on 5 September 2017 that is in force until 9 September 2020, the Committee will not examine the matter further.*
214. *Lastly, concerning the allegation of non-compliance with the collective agreement that is no longer in force, the Committee observes that, as the Government indicates, the complainants did not specify which clauses were allegedly violated by the enterprise and the nature of the alleged non-compliance. Consequently, and taking account of the fact that the union and the enterprise have negotiated a new collective agreement that is in force, the Committee will not examine this allegation further.*

The Committee's recommendation

215. *In the light of its foregoing conclusions, the Committee invites the Governing Body to decide that this case does not call for further examination.*

CASE NO. 3184

INTERIM REPORT

**Complaint against the Government of China
presented by
the International Trade Union Confederation (ITUC)**

Allegations: Arrest and detention of eight advisers and paralegals who have provided support services to workers and their organizations in handling individual and/or collective labour disputes, as well as police interference in industrial labour disputes

- 216.** The Committee last examined this case at its October 2018 meeting [see 387th Report, paras 228–244].
- 217.** The International Trade Union Confederation (ITUC) sent additional information in a communication dated 18 February 2019.
- 218.** The Government sent its partial observations in a communication dated 8 May 2019.
- 219.** China has not ratified either the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

- 220.** At its October 2018 meeting, the Committee made the following recommendations in relation to this case [see 387th Report, para. 244]:
- (a) The Committee requests the Government to keep it informed of measures taken to ensure the right of all workers to form and join the organization of their own choosing.
 - (b) The Committee requests the Government to reply to the specific allegations in relation to the right to strike in practice, including the frequent use of public order laws to restrict its exercise, by specifying the conditions for the effective exercise of this right in law and in practice.
 - (c) The Committee requests the Government to transmit a copy of the report of the investigation into the alleged harsh treatment of the labour activists while in custody and numerous interrogations of the accused.
 - (d) The Committee urges the Government to conduct a full investigation into the alleged beating and injuries suffered by workers and their representatives at the shoe factory,¹ as well as Mr Chen and Ms Zhu Xinhua (labour dispute at the bag factory)² without further delay and to keep it informed of the outcome.
 - (e) The Committee requests the Government to keep it informed of the outcome of the ongoing investigation into the destruction of the door in Mr Meng Han's rented house.

¹ Lide Shoe Factory.

² Cuiheng Bag Factory.

- (f) The Committee once again requests the Government to confirm that Mr Deng and Mr Peng are no longer under investigation and will not be prosecuted.

B. Additional information from the complainant

- 221.** By a communication dated 18 February 2019, the ITUC provides an update on the developments in this case and alleges new cases of harassment, intimidation, arrests and physical abuse of workers for exercising their fundamental right to establish organizations.
- 222.** The ITUC recalls that on 3 November 2016, Mr Meng was sentenced to one year and nine months of imprisonment. He was released on 3 September 2017. The ITUC alleges that in order to prevent him from returning to his home in Guangzhou city where he had been working as a labour activist, his identification documents were withheld by the authorities. He was informed that he would need to return to his place of origin in Hubei province to apply for new identification documents. According to the complainant, when Mr Meng refused to comply, his freedom of movement was restricted and he was put under surveillance by the public security authorities and plain-clothes police. On 22 September 2017, he was detained for questioning at the Jingzhou branch station of Nansha district over the articles he posted on the Internet. His posts described his activism, trial and treatment during his time in prison, which included a prohibition to talk to other prisoners. The posts were deleted by the authorities and he was released a few days later. Furthermore, according to the ITUC, Mr Meng contracted hepatitis C while in prison and, without identification papers since his release, Mr Meng has been unable to access medical services, or to apply for a formal job.
- 223.** The ITUC further alleges that the Government's indication contained in its previous reply to the Committee to the effect that the local public security authorities in Guangdong province had not received any complaints regarding cases of beatings at the shoe factory – suggesting that such beatings never happened – is false. The ITUC alleges in this regard that according to an article and photos circulated online, at around 4 p.m. on 19 April 2015, 106 factory workers and 20 workers' representatives were having a meeting at a local restaurant to discuss how to demand that the factory management pay all overdue social insurance and housing provident fund premium when nearly 100 police officers arrived in more than ten riot police vans. They started to beat workers and eventually took away Mr Meng from the Panyu Worker Service Centre. Some workers suffered injuries and needed medical attention.
- 224.** The ITUC further points out that despite the Government's claim that it safeguards the exercise of the rights of assembly, procession and demonstration, in practice, it is virtually impossible for workers to exercise these rights without being subjected to repression and sanctions. According to the ITUC, the Law on Assemblies, Processions and Demonstrations (1989) and the Implementing Regulation (2011, revised) are just two examples of national laws that put obstacles on the exercise of the rights to freedom of association and peaceful assembly. In this respect, the ITUC refers to sections 7 and 8 of the Law on Assemblies, Processions and Demonstrations, which provide for a system where a prior permission by the public security authorities is needed in order to carry out a protest action. The prerequisites for obtaining permission are, according to the complainant, excessive and include the submission of detailed information on posters and slogans, number of participants, vehicles, sound facilities, starting and finishing time, the route, as well as personal information about the organizers to the competent authorities. Inter-provincial and municipal assemblies are prohibited under section 15 of the Law, which does not allow individuals to organize or participate in assemblies, processions or demonstrations staged in places other than one's place of residence. Furthermore, when an assembly, procession or demonstration concerns a dispute, the Implementing Regulation further authorizes the public

security authorities to mandate a mediation between the parties before deciding on the application (section 11 of the Implementing Regulation).

- 225.** The ITUC further refers to new instances of violation of freedom of association, which allegedly took place at the Jasic Technology Company in Shenzhen (hereafter, the technology company) and describes the course of events as follows.
- 226.** On 10 May 2018, three workers of the company (Mr Mi Jiuping, Mr Liu Penghua and Mr Zhang Baoyan) submitted a joint letter signed by 28 workers to the Pingshan District Federation of Trade Unions (FTU) and the Pingshan District Human Resources Bureau, requesting their support to address a range of workplace grievances. Workers' demands included abolishing excessive and unreasonable fines, stopping physical and verbal abuse, removing stringent company rules and the possibility to establish an enterprise-level trade union. The Pingshan District FTU replied positively and expressed their support to workers' desire to form a branch union.
- 227.** On 7 June 2018, two workers' representatives, Messrs Mi and Liu, submitted an application to establish an enterprise-level trade union to the Pingshan District FTU and the Longtian Street FTU. The Zhukeng Community Federation accepted the application and requested the company's seal on the form for the application to be approved. According to the ITUC, however, there is no such requirement in the Trade Union Law or in the Measures for the Implementation of Trade Union Law in Shenzhen. On 22 June 2018, the company rejected the workers' request to stamp the application. The Longtian Street FTU advised Messrs Mi and Liu to organize 100 members and call for a general meeting to elect a trade union preparation committee.
- 228.** In early July 2018, the management told Mr Mi to accept a transfer to a different position within the company or to face dismissal. Mr Mi sent a letter to the Shenzhen FTU asking for their help. On 10 July 2018, the Vice-Chairperson of the Pingshan District FTU and the Vice-Chairperson of the Longtian Street FTU informed Mr Mi that the Pingshan District FTU had communicated with the company and instructed him to collect workers' opinions and obtain the company's approval to set up a union. Within the next two days, Mr Mi and other workers formed a trade union preparation committee and collected the signatures of 89 workers consenting to join the union.
- 229.** On 12 July 2018, the management accused Mr Mi of deceiving workers, intimidated those who signed the form and pressured them to remove their names. That evening, the Vice-Chairperson of the Pingshan District FTU declared that Mr Mi's actions as well as the actions of the union preparation committee were illegal and demanded that Mr .Mi write a memo stating that the District Union was not involved in their efforts. Mr Mi went to the Shenzhen FTU on 13 July 2018 and asked them to supervise the establishment of a trade union and to ensure that trade unions at all levels safeguard the legal rights and interests of workers.
- 230.** On 16 July 2018, Mr Liu Penghua (a member of the union preparation committee) was transferred to a different post within the factory. Later, he was violently beaten by a group of unidentified people who were driven to the factory. Mr Liu was then taken away by officers from the Yanziling police station and not released until the next morning.
- 231.** On 18 July 2018, another official from the Pingshan District FTU asked Mr Mi to declare that his actions to form a union were a personal decision and not under the instruction of the District FTU. That afternoon, on the order of a top executive and a production line manager, a group of security guards violently threw Mr Mi out of the factory. He suffered injuries to his leg as he was pushed to the ground. Another worker, Mr Song, who came to Mr Mi's assistance, was also attacked. That night, both Mr Mi and Mr Song were informed that they were dismissed. A few other workers also received dismissal notices. On the morning of

20 July 2018, the dismissed workers returned to the factory but were blocked from entering the premises. They were then beaten and detained by the police from the Yanziling police station. More than 20 workers protested in front of the police station demanding their release, only to be detained as well. All workers were released in the evening, but several suffered serious injuries.

232. On 23 July 2018, the Pingshan FTU met with the company executives to discuss the establishment of an enterprise union. On 1 August 2018, the Longtian Street FTU approved the trade union preparation group. The Vice-Chairperson of the Pingshan District FTU was appointed the director of the group and the company investment director as the deputy. The other five members of the group, all company managers, were instructed to enrol as union members under the Longtian Street FTU to enable them to participate in the trade union election. On 20 August 2018, the Shenzhen Jasic Technology Trade Union held its general assembly to elect 100 representatives who then elected nine union committee members. The management did not allow for campaigns or questions in the election process. Workers were simply given a ballot to choose their representatives from. As a result, 72 of the 100 representatives are managers or supervisors. According to the complainant, the nine-member trade union committee is effectively dominated by management. The company investment director became the trade union chairperson.
233. On 27 July 2018, the six dismissed workers (Mi Jiuping, Song Yiao, Liu Penghua, Kuang Hengshu, Zhang Baoyan and Chang Zhongge) made another attempt to return to work but were blocked again. They, as well as two ex-workers (Yu Juncong and Li Zhan), their supporters and students were later detained by the Pingshan police for the criminal offence of picking a quarrel and provoking trouble. Before the end of the 37-day criminal detention permitted by the Criminal Code, all except for Mi Jiuping, Liu Penghua, Yu Juncong and Li Zhan had been released. Messrs Mi and Yu were able to meet with their lawyers on 1 August 2018. However, the lawyers were forced to withdraw from the case under pressure from the local Justice Bureau, the Public Security Bureau and the Political and Legal Affairs Committee. Lawyers from other provinces who agreed to represent them were denied access to the workers. On 3 September 2018, Mi Jiuping, Liu Penghua, Yu Yucong and Li Zhan were formally charged with the criminal offence of “assembling a crowd to disturb public order”.
234. Following the arrests of workers and supporters on 27 July 2018, hundreds of university students wrote open letters on social media in their support. About 20 of them travelled to Shenzhen. On 6 August 2018, around 50 student activists and supporters protested in front of the police station where the workers were detained. Ms Shen Mengyu began advocating for workers who were trying to form a union. On 11 August 2018, after dining with her parents, she was taken away in a car by three unidentified men. She is currently being held at an unknown location. At 5 a.m. on 24 August 2018, police with riot gear raided an apartment in Huizhou and detained about 50 student activists and supporters. Some detained student activists were escorted back to their home towns by the police after a few days. Ms Yue Xin, a recent graduate from Peking University, was among dozens of other student activists who travelled to Shenzhen to support the workers. She was also arrested during the raid on 24 August 2018. Ms Gu Jiayue, another graduate of Peking University, who previously organized petitions to the All-China Federation of Trade Unions (ACFTU) and the All-China Women’s Federation in Beijing, was also arrested in the raid.
235. On 9 and 11 November 2018, authorities detained 18 worker supporters in Beijing, Guangzhou, Shanghai, Shenzhen and Wuhan. Zhang Shengye, a recent graduate of Peking University, was physically assaulted and abducted from the university campus. On 9 November 2018, Zou Liping and Li Ao, two union officials at the Zhukang Commune Trade Union who helped the company workers with the application procedure to set up an enterprise-level union, were detained by police on suspicion of “picking quarrels and

provoking trouble”. On 30 November 2018, lawyer Huang Sha, who represented former workers and labour activists associated with the workers’ attempt to form a trade union, was arrested in Putian, Shenzhen.

236. On the evening of 20 January 2019, police arrested another five well-known labour activists, all of them either currently working in Shenzhen or with connections to labour groups in the city. These activists are Zhang Zhiru and Jian Hui, the founder and an activist at the Chunfeng Labour Dispute Service Centre, both involved in numerous labour disputes since 2010; He Yuancheng, former editor of the Collective Bargaining Forum; Wu Guijun, former lead workers’ organizer at a Hong Kong-owned company in Shenzhen, currently an independent activist helping workers to claim social insurance and other entitlements; and Song Jiahui, a workers’ representative involved in the negotiation of one of the most comprehensive compensation packages during the relocation of the shoe factory in Guangzhou. All five have been charged with gathering a crowd to disturb public order and are being held in a detention centre in Shenzhen’s Bao’an district.
237. Moreover, two paralegals of the Dagongzhe Migrant Worker Centre (DGZ Centre) in Shenzhen, Fu Changguo and Huang Qingnan, were arrested and detained for providing support to the company workers. Mr Fu took part in solidarity actions outside the company and helped dismissed workers to return to work. Moreover, he engaged in online support actions by sharing pictures, videos and updates. As a result, he was subjected to repeated interrogations between 25 July and 7 August 2018, ranging from two hours to 11 hours each time. During the last interrogation, police cited the foreign NGO law and the national security law as the basis for his detention. His lawyer requested to meet him on 10 August 2018 but was not authorized. Even his family was unable to obtain any information about his location. According to the ITUC, public authorities denied he was detained. Mr Fu’s family finally succeeded in obtaining confirmation that he was detained at Shenzhen Municipal No. 2 Detention Centre. His lawyer was informed on 18 September 2018 that Mr Fu was formally charged on 9 September 2018 for “gathering a crowd to disturb public order”. His lawyer was only allowed to meet Mr Fu for one hour on 20 September 2018, more than one month after he was arrested and formally charged. His request for release on bail was rejected. Mr Fu remains in detention.
238. On 24 August 2018, the state newspaper *Xinhua News* published an article entitled “Investigation on so-called worker incidents in Shenzhen” stating that Mr Fu was involved in organizing and agitating workers and that the DGZ Centre was an illegal organization that “secretly agitates workers”.
239. On 13 August 2018, Mr Huang Qingnan was taken into custody and transferred to the Shenzhen Investigation Centre. Although Mr Huang had not taken part in the dispute, he was officially detained for “picking quarrels and provoking trouble”. At the same time, two staff members of a Hong Kong-based labour NGO, Worker Empowerment (WE), were detained at Ailian police station when inquiring about the situation of Mr Fu. They were interrogated about their involvement with the DGZ Centre and the dispute at the company. On 30 August 2018, police at Mr Huang’s hometown in Fujian went to his mother’s house to ask about Huang’s activities, including how often he visits Shenzhen, whether he owns property there, his marital status, as well as his sister’s residence, etc. Mr Huang Qingnan was released on bail on 3 September 2018 and returned to Fujian province.
240. During the same period, two former DGZ Centre staff were summoned by the police and interrogated, one for two hours and the other for 24 hours. Furthermore, members of the DGZ Centre’s WeChat group received phone calls from the police asking them to refrain from sharing “inappropriate speech”. Police also raided the DGZ Centre’s office and confiscated attendance sign-in sheets and cell phones.

241. The complaint concludes by stating that the employer in question has repeatedly violated workers' freedom of association rights by intervening and participating in trade union elections (in violation of the local law), dismissing workers for their union organizing activities and using thugs to physically assault them. The ITUC further alleges that it is a common practice that the upper-level official union federations require workers to obtain management's approval to form unions, which makes it impossible for workers to exercise their rights. According to the ITUC, workers' rights were further violated by the State by means of arrests, beatings by the police while in detention and the criminalization of protest. The complainant considers that the State has further violated workers' rights when it failed to take affirmative measures to protect freedom of association rights and when it failed to provide a remedy when these rights were violated. The complainant considers that the State and the employer appear to have colluded to deny the workers the right to freedom of association guaranteed under the ILO Constitution.
242. The ITUC further points out that the national and provincial law violate principles of freedom of association. The right of workers to form trade union organizations is guaranteed under section 3 of the Trade Union Law only when they are represented by the ACFTU (section 2). Local regulations further restrict the process of registering an enterprise union unless the upper federation gives approval and leads the preparation process (section 9 of the Measures of Shenzhen Municipality to Implement the Trade Union Law (2008)). The use of the criminal offence of "gathering a crowd to disturb public order" (section 290 of the Criminal Law) and the vaguely worded "picking quarrels and provoking troubles" (section 293 of the Criminal Law) at the discretion of the police, public security authorities and the prosecutor further create an environment where workers are reluctant to exercise their right to freedom of association. According to the complainant, the Supreme Court interprets this provision to cover general circumstances where a serious impact to work, lives, production, and business operations has been made, or a commotion has been caused. The criminal offence of "gathering a crowd to disturb public order" is used at the discretion of the police, public security and the prosecutor to charge workers when they attempt to take industrial action. The competent authorities simply resort to this criminal offence in a widely extended scope to arbitrarily arrest, detain and prosecute any person for their sympathetic expressions, actions or activities supporting workers.
243. The ITUC considers that the arrest of student activists who provided support to the workers in their exercise of freedom of association constitutes a further violation of that right. Similarly, Mr Fu's arrest and detention based on his support to the workers is a violation of the right to associate. The arrest, harassment and public smears against the staff of DGZ Centre, where Mr Fu works, has a chilling effect on workers, especially those who have been supported by the Centre. The ITUC provides a list of 32 individuals detained or disappeared in connection with the workers' campaign described above (attached as Appendix).

C. The Government's reply

244. By its communication dated 8 May 2019, the Government indicates that it had conducted a special investigation in the situation alleged in the latest communication of the ITUC and provides in this respect the following information.
245. In May 2018, in the absence of a trade union, employees of the technology company, Messrs Mi Jiuping, Liu Penhua and Yu Juncong conveyed the idea of setting up a union to the authorities at the district and neighbourhood levels. The persons in charge of the District FTU led the relevant personnel to discuss and coordinate with Mr Mi several times, and went to the company to give feedback on the opinions and suggestions of workers to the senior management in order to guide and help the enterprise to set up a trade union. On the afternoon of 12 July 2018, under the guise of the so-called "instructions and requests of the

trade unions at higher level”, Mr Mi and others published an open letter in the name of the “Preparatory Group for the Trade Union of Jasic Technology” with an aim of inciting workers of the company. The District FTU immediately sent someone to investigate the matter. It disputed and criticized the words and acts of Mr Mi and others and ordered them to stop their actions immediately. On 16 July 2018, Mr Liu was dismissed for fighting with his colleagues. On 20 July 2018, Mr Liu and six other people gathered by the gate of the company and forced their way into the compound to cause trouble. Local police was called and brought these workers to the police station for further inquiry. Later, about 20 people who called themselves Mr Liu’s relatives or co-workers gathered at the police station demanding the “release of the detained”. The police dealt with the situation in accordance with the law. After a verification by the local public security authorities, it turned out that Mr Liu fought with two co-workers on 16 July 2019 because of the orientation of the fans in the workshop, and as a result, all three were dismissed. The allegation that the company had hired someone to beat him up was not confirmed. On the afternoon of 21 and 22 July 2019, Mr Yu and about 20 others once again gathered around the Yanziling police station chanting slogans, demanding that the “guilty batters” be punished. It was also understood that Messrs Liu, Yu and others urged members in several social media groups to block, surround and adopt other extreme measures.

- 246.** After the incident, the relevant departments of the Guangdong Provincial government and the Provincial FTU jointly set up a special team to handle the incident and guide its settlement. The rules and regulations of the company were verified as to their conformity with the legislation, and the application of overtime and other issues were examined and settled, following which, a trade union was formed. In particular, the team noted that since 2017, the Labour Service of Longtian Street Neighbourhood received five complaints on behalf of 21 people regarding arbitrary fines and disagreement with the readjustment of rest time. The team considered that the rules and regulations of the company clearly stipulate the circumstances of economic penalties for violations of discipline. These rules have been formulated through a democratic process and all entry employees have signed and confirmed their knowledge thereof and expressed their willingness to abide by them. The economic penalties for violations of the discipline carried out by the company in accordance with the rules and regulations do not run counter to the “Regulations of Shenzhen Municipality on the Payment of Wages to Employees” and other relevant legislation. During the investigation, it was found however that the company had practiced illegitimate acts such as overtime. A relevant Notice was issued requesting the company to make a correction within a determined time frame. The issue has now been resolved in accordance with the law.
- 247.** As to the cases reported by Mr Yu, the investigation established that on 18 May 2018, Mr Yu filed a complaint online against the company alleging that the latter: (1) is forcing workers to hike without paying overtime; (2) promulgated 18 bans; (3) practiced illegal fines; and (4) dismissed employees illegally. Regarding the first allegation, the investigation determined that since 2017, the company has been organizing hiking activities in Longshan Park every quarter. Such activities are scheduled on weekend mornings. They are voluntary and family members of employees are encouraged to participate; they do not fall into the category of overtime. Regarding the 18 bans imposed by the company in 2012 to regulate employee management, these were superseded after the Employee Manual came into force in 2015. Regarding the third allegation, it was determined that in June 2017, the company imposed a 200 Yuan fine on Mr Yu for violating the discipline (playing with his mobile phone during working hours, which he had admitted doing). Finally, as regards the fourth allegation, the investigation noted that the Employee Manual of the company stipulates that serious violations involving a total of three cumulative days of absenteeism within a year shall be treated as automatic separation from service. Mr Yu was absent from work for three and a half days from April to May. In accordance with the regulations, the company terminated Mr Yu’s contract and settled his wages. On 10 May 2018, Mr Yu submitted eight claims to the Arbitration Commission for Labour Dispute (ACLD) in Pingshan District,

demanding the reimbursement of 200 Yuan (fine imposed on him as a disciplinary and economic penalty) and a compensation for the illegal dismissal. On 16 July 2018, Mr Yu filed a lawsuit with the Pingshan District Court against the verdict of the ACLD. The Government indicates that this civil case is currently suspended because the party concerned is involved in another criminal case.

248. Regarding the establishment of a trade union, the investigation determined that under the guidance of the FTU at the provincial and municipal levels, the company established the trade union by election on 20 September 2018. There was a total of 14 members serving the Committee for Trade Union Affairs, the Committee for Funds Review and the Committee on Female Employees and Workers, of which 11 were front-line workers accounting for 78.6 per cent of the total elected members. By 30 September 2018, trade union membership expanded to 687, with a membership rate of 70.97 per cent. The trade union applied for and obtained a certificate of a legal person, had its seal engraved, opened a funds account, formulated its rules and set up six special working bodies, including the Organizational Building Committee, the Outreach and Sports Committee, the Labour Dispute Mediation Committee, the Work Safety Supervision Committee, the Social Security and Welfare Committee and the Enterprise Democratic Management Committee.
249. After its establishment, the union has actively communicated and consulted with the management of the company on the issues of holiday benefits, the organization of cultural and sports activities, the improvement of welfare benefits, and adjustment of the wage system, as well as organized visits to workers living in difficult conditions. High-level trade unions continue to provide strong guidance and assistance to the trade union of the company. The Government indicates that the work of the trade union is being carried out in a standardized and orderly manner.
250. As to the outstanding recommendations of the Committee, the Government reiterates that the Constitution and the relevant laws fully guarantee freedom of association. It further reiterates that by adhering to the working principle of organizing and earnestly safeguarding their rights, Chinese trade unions have resolutely supported and safeguarded the right of workers and employees to join associations and have constantly expanded their membership. According to the Government, by the end of September 2017, 2,809,000 grass-roots trade unions representing over 300 million workers had been established in the country. At the same time, like in other countries, in the exercise of freedom of association rights, especially those relating to social governance, workers and trade union organizations must abide by the national legislation. The parties involved in this case were not investigated due to the establishment of a trade union and participation in its activities, but rather, because they used illegal means in the labour disputes, violating the legislation in force. In handling this case, Chinese courts and public security authorities proceeded in strict compliance with the procedures prescribed by the law, and the rights of the parties concerned were properly ensured.

D. The Committee's conclusions

251. *The Committee recalls that this case concerns allegations of arrest and detention on charges of "gathering a crowd to disturb public order" of advisers and paralegals who have provided support services to workers and their organizations in handling individual and/or collective labour disputes.*
252. *The Committee notes with serious concern the complainant's additional allegations in relation to Mr Meng, one of the advisers who had been sentenced to 21 months of imprisonment on such charges. The ITUC alleges that following his release from prison, Mr Meng's identification documents were withheld by the authorities; without the documents, he cannot access medical services to treat hepatitis C, contracted in prison, nor*

apply for jobs. The ITUC further alleges in particular, that Mr Meng's freedom of movement is restricted and that he was once again detained (for a few days) following publication of articles describing his activism, trial and imprisonment. The Committee deeply regrets the absence of a reply from the Government on this matter and considers that the withholding of identification documents by reason of a person's involvement in legitimate trade union activities or assistance therewith would appear to violate the basic civil liberties of Mr Meng, given that these documents are necessary for his freedom of movement, as well as for obtaining employment and accessing healthcare services. The Committee therefore urgently requests the Government to take the necessary steps for the delivery to Mr Meng of the identification papers without delay. Furthermore, once again recalling that the detention of trade unionists for reasons connected with their activities in defence of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 123], the Committee urges the Government to reply without delay to the allegation of detention of Mr Meng following publication of articles in relation to his activities and imprisonment. With reference to its previous recommendations in this case, the Committee once again requests the Government to keep it informed of the outcome of the ongoing investigation into the destruction of the door in Mr Meng's rented house.

253. The Committee further recalls that in its previous examination of this case it had regretted that no information had been provided by the Government regarding the alleged beating and injuries suffered by workers and their representatives at the shoe factory, as well as by Mr Chen and Zhu Xinhua (labour dispute at the bag factory) and requested the Government to provide detailed information on the outcome of the relevant investigations. In this respect, the Committee had noted the Government's indication that the investigation revealed that the local public security authorities in Guangdong Province did not receive any complaints reporting cases of beatings of workers at the shoe factory (nor of Mr Chen, Zhu Xinhua and others at the bag factory). The Committee notes that the ITUC refutes the Government's claim that the local public security authorities had not received any complaints of cases of beatings at the shoe factory. The Committee once again recalls that all allegations of violence against workers who are organizing or otherwise defending workers' interests should be thoroughly investigated and full consideration should be given to any possible direct or indirect relation that the violent act may have with trade union activity. In the event of assaults on the physical or moral integrity of individuals, the Committee has considered that an independent judicial inquiry should be instituted immediately with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts [see **Compilation**, op. cit., paras 101 and 105]. The Committee considers that even in the absence of complaints to the local authorities, the allegations in this case should be drawn to the attention of the relevant authority for full investigation. The Committee therefore once again urges the Government to conduct a full investigation into these allegations without further delay and to keep it informed of the outcome.
254. The Committee further recalls that it had requested the Government to provide detailed information on the alleged harsh treatment of the labour activists while in custody, and, in particular, on the alleged numerous interrogations of the accused. The Committee had previously noted the Government's indication that a special investigation into the situation was carried out and revealed that Mr Zeng and others were not subject to cruel treatment while in detention. The Government reiterated that the public security authority deals with cases in strict conformity with relevant legal provisions and that the rights of those concerned were sufficiently safeguarded during the hearing. In the absence of any new information, the Committee urgently requests the Government to transmit a copy of the investigation report.

255. *With reference to its previous recommendations in this case, the Committee once again requests the Government to confirm that Mr Deng and Mr Peng are no longer under investigation and will not be prosecuted.*
256. *The Committee further notes that the complainant submits new allegations of violation of workers' rights to establish a trade union in full freedom without previous authorization at the technology company in Shenzhen, as well as arrests, detention, ill-treatment and disappearance of labour activists and supporters of the company's workers and the detailed account of the events that gave rise thereto. The Committee regrets to note that the Government has provided only a partial reply to these allegations.*
257. *With regard to the alleged difficulties with the establishment of a trade union at the technology company, while noting from the Government's reply that a union has now been established, it appears from the complainant's allegations and the Government's reply thereon that this was only possible with the involvement and approval of the FTU. In this respect, the Committee notes that the ITUC reiterates that the overall legislative framework does not allow workers to join or form trade unions unless the local unions affiliate with the ACFTU and that in this particular case, the nine-member trade union committee finally elected is effectively dominated by management with the company investment director as the trade union chairperson. While taking note of the Government's reiteration that the national legislation and practice ensure that workers enjoy freedom of association, the Committee recalls that workers should be fully ensured the right to form and join the organization of their own choosing and that this implies, in particular, the effective possibility of forming, in a climate of full security, organizations independent both of those which exist already and of any political party [see **Compilation**, op. cit., para. 475]. It once again requests the Government to keep it informed of measures taken to ensure the right of all workers to form and join the organization of their own choosing.*
258. *The Committee notes with serious concern the list of 32 individuals (noted in the appendix) who are allegedly in detention or have disappeared in this connection, as well as criminal charges brought against some. Regretting that no information has been provided by the Government in respect of this serious allegation, the Committee once again recalls that the detention of trade unionists for reasons connected with their activities in defence of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular [see **Compilation**, op. cit., para. 123]. The Committee therefore urges the Government to take all necessary steps to ensure the release of any workers detained in relation to their activities to form a union and to submit a detailed reply on the above grave allegations of violation of trade union rights and civil liberties without further delay.*
259. *The Committee further notes that among these 32 individuals, four (Messrs Mi, Yu, Liu and Li) were workers of the technology company who were also allegedly dismissed due to their involvement in the establishment of the union and later charged with the criminal offence of "assembling a crowd to disturb public order". The ITUC also refers to the dismissal of other workers in this connection and names, in particular, Messrs Song, Kuang, Zhang and Chang. The Committee notes that according to the Government, following investigations it was ascertained that Messrs Liu and Yu were dismissed for fighting with their colleagues and absenteeism, respectively, and that the civil case of Mr Yu's dismissal was suspended due to him being involved in a pending criminal case. The Committee observes the contradictory nature of the information provided by the Government and that of the complainant in relation to the circumstances around these dismissals. The Committee recalls that adequate protection against all acts of anti-union discrimination in respect of employment, such as dismissal, demotion, transfer or other prejudicial measures is fundamental to the principle of freedom of association. The Committee urges the Government to take the necessary measures to ensure adequate protection against anti-*

union discrimination in law and in practice and to provide a copy of the report on the outcome of the investigation referred to by the Government and detailed information with regard to the alleged dismissals of Messrs Mi, Li, Song, Kuang, Zhang and Chang.

- 260.** *The Committee understands that the pending criminal cases against the four workers are in relation to the exercise of their right to assembly. It notes in this respect that the ITUC reiterates that it is not possible for workers and labour activists to participate in a legitimate strike or demonstration without violating the law that prohibits the disturbance of public order; and that it is common for the prosecutor and the court to view industrial action taken by workers as public security violations rather than as the exercise of fundamental rights. With reference to its previous examinations of this case, the Committee requests the Government to reply without further delay to the specific allegations in relation to the exercise of the right to strike and demonstrate in practice.*

The Committee's recommendations

- 261.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*

(a) Regarding the allegations involving Mr Meng, the Committee:

- *urgently requests the Government to take the necessary steps for the delivery to Mr Meng of the identification papers without delay;*
- *urges the Government to reply without delay to the allegation of detention of Mr Meng following publication of articles in relation to his activities and imprisonment; and*
- *once again requests the Government to keep it informed of the outcome of the ongoing investigation into the destruction of the door in Mr Meng's rented house.*

- (b)** *The Committee once again urges the Government to conduct a full investigation into the alleged beatings and injuries suffered by workers and their representatives at the shoe factory, as well as Mr Chen and Zhu Xinhua (labour dispute at the bag factory) without further delay and to keep it informed of the outcome.*

- (c)** *The Committee urgently requests the Government to transmit a copy of the report of the investigation into the alleged harsh treatment of the labour activists while in custody and numerous interrogations of the accused.*

- (d)** *The Committee once again requests the Government to confirm that Mr Deng and Mr Peng are no longer under investigation and will not be prosecuted.*

- (e)** *The Committee once again requests the Government to keep it informed of measures taken to ensure the right of all workers to form and join the organization of their own choosing.*

- (f)** *The Committee urges the Government to take all necessary steps to ensure the release of any workers detained in relation to their activities to form a union and to submit a detailed reply on the allegations of arrests, detention, ill-*

treatment and disappearance of labour activists and supporters of the technology company's workers, as well as criminal charges laid against some.

- (g) The Committee urges the Government to take the necessary measures to ensure adequate protection against anti-union discrimination in law and in practice and to provide a copy of the report on the outcome of the investigation referred to by the Government (regarding Messrs Yu and Li) and detailed information with regard to the alleged dismissals of Messrs Mi, Li, Song, Kuang, Zhang and Chang.*
- (h) The Committee once again requests the Government to reply without further delay to the specific allegations in relation to the right to strike and demonstrate in practice, including the frequent use of public order laws to restrict its exercise, by specifying the conditions for the effective exercise of this right in law and in practice.*
- (i) The Committee will once again examine this case at its next meeting in October–November 2019.*

Appendix

List of 32 individuals detained or disappeared in connection with Jasic workers' campaign

1. Mr Mi Jiuping: The technology company worker, detained since July 2018, charged with “gathering a crowd to disrupt social order.” He is being held at the Shenzhen Municipal No. 2 Detention Centre. Mi’s first two lawyers were forced to withdraw from his case. On 1 October 2018, a request by a new lawyer to meet with Mi was denied on the grounds that Mi’s case involved state secrets.
2. Mr Yu Juncong: The technology company worker, detained since July 2018, charged with “gathering a crowd to disrupt social order”. He is being held at the Shenzhen Municipal No. 2 Detention Centre. After meeting with Yu on 30 August 2018, Yu’s lawyer was pressured to withdraw from the case. Yu’s requests for a meeting with his new lawyer have not been accepted after 30 August 2018.
3. Mr Liu Penghua: The technology company worker, detained since July 2018, charged with “gathering a crowd to disrupt social order”. He is being held at the Shenzhen Municipal No. 2 Detention Centre. Liu told a lawyer who met with him in September that he had been beaten. Further requests to meet with his lawyer have been denied.
4. Mr Li Zhan: former The technology company worker and worker supporter, detained since July 2018, charged with “gathering a crowd to disrupt social order”. He is being held at the Shenzhen Municipal No. 2 Detention Centre. After meeting with Li on 18 September 2018, Li’s lawyer was pressured to withdraw from his case.
5. Ms Shen Mengyu: graduate of Sun Yat-sen University, forcibly disappeared in August 2018. Still missing.
6. Ms Yue Xin: graduate of Peking University, forcibly disappeared on 24 August 2018. Still missing.
7. Ms Gu Jiayue: graduate of Peking University, taken from her home on 24 August 2018, charged with “picking quarrels and provoking trouble” and is being held under “residential surveillance at a designated place”. Whereabouts unknown.
8. Mr Xu Zhongliang: graduate of University of Science and Technology Beijing, detained since 24 August 2018, charged with “picking quarrels and provoking trouble” and is being held under “residential surveillance at a designated place”. Whereabouts unknown.
9. Mr Zheng Yongming: graduate of Nanjing Agricultural University, detained since 24 August 2018, charged with “picking quarrels and provoking trouble” and is being held under “residential surveillance at a designated place”. Whereabouts unknown.
10. Mr Shang Kai: editor of a leftist media website Hongse Cankao, taken away by Guangdong police on 24 August 2018 from the office of Hongse Cankao. Still missing.
11. Mr Fu Changguo: staff member of a workers’ centre, Dagongzhe, detained since August 2018, charged with “gathering a crowd to disrupt social order” and is being held at the Shenzhen Municipal No. 2 Detention Centre.
12. Mr Yang Shaoqiang: graduate of University of Science and Technology Beijing, taken from home in August 2018, charged with “picking quarrels and provoking trouble” and is being held under “residential surveillance at a designated place”. Whereabouts unknown.
13. Mr Tang Jialiang: postgraduate student at Beijing Institute of Technology, forcibly disappeared since early September 2018. Still missing.
14. Mr Wu Lijie: editor of a leftist media website Hongqi, taken from home and forcibly disappeared 24 October 2018. Still missing.

15. Mr Zhang Shengye: graduate of Peking University, taken from campus and forcibly disappeared on 9 November 2018. Still missing.
16. Ms Sun Min: graduate of Peking University, taken away in Guangzhou and forcibly disappeared on 9 November 2018. Still missing.
17. Mr Zong Yang: graduate of Peking University, taken away in Beijing and forcibly disappeared on 9 November 2018. Still missing.
18. Mr Liang Xiaogang: worker supporter, taken away in Shanghai and forcibly disappeared on 9 November 2018. Still missing.
19. Mr Tang Xiangwei: worker supporter, taken away in Wuhan and forcibly disappeared on 11 November 2018. Still missing.
20. Mr Zheng Shiyou: worker supporter, taken away in Wuhan and forcibly disappeared on 11 November 2018. Still missing.
21. Ms Zheng Yiran: graduate of Beijing Language and Culture University, taken away in Beijing and forcibly disappeared on 9 November 2018. Still missing.
22. Mr Lu Daxing: graduate of Nanjing University of Science and Technology, taken away in Beijing and forcibly disappeared on 9 November 2018. Still missing.
23. Ms Li Xiaoxian: graduate of Nanjing University of Chinese Medicine, taken away in Beijing and forcibly disappeared on 9 November 2018. Still missing.
24. Mr He Pengchao: graduate of Peking University, founder of Qingying Dreamworks Social Worker Centre, taken away in Beijing and forcibly disappeared on 9 November 2018. Still missing.
25. Ms Wang Xiangyi: graduate of Peking University, founder of Qingying Dreamworks Social Worker Centre, taken away in Shenzhen and forcibly disappeared on 9 November 2018. Still missing.
26. Ms Jian Xiaowei: graduate of Renmin University, staff member of Qingying Dreamworks Social Worker Centre, taken away in Shenzhen and forcibly disappeared on 9 November 2018. Still missing.
27. Ms Kang Yanyan: graduate of University of Science and Technology Beijing, staff member of Qingying Dreamworks Social Worker Centre, taken away in Shenzhen and forcibly disappeared on 9 November 2018. Still missing.
28. Ms Hou Changshan: graduate of Beijing Foreign Studies University, staff member of Qingying Dreamworks Social Worker Centre, taken away in Shenzhen and forcibly disappeared on 9 November 2018. Still missing.
29. Ms Wang Xiaomei: graduate of Nanjing University of Information Science and Technology, staff member of Qingying Dreamworks Social Worker Centre, taken away in Shenzhen and forcibly disappeared on 9 November 2018. Still missing.
30. Ms He Xiumei: supporter of Qingying Dreamworks Social Worker Centre, taken away in Shenzhen and forcibly disappeared on 9 November 2018. Still missing.
31. Ms Zou Liping: local trade union staff member, detained in Shenzhen on 9 November 2018, charged with “picking quarrels and provoking trouble”. Whereabouts unknown.
32. Mr Li Ao: local trade union staff member, detained in Shenzhen on 9 November 2018, charged with “picking quarrels and provoking trouble”. Whereabouts unknown.

Complaints against the Government of Colombia presented by

- the International Trade Union Confederation (ITUC)
- the World Federation of Trade Unions (WFTU)
- the Single Confederation of Workers of Colombia (CUT)
- the General Confederation of Labour (CGT)
- the National Union of Food Workers (SINALTRAINAL)
- the Union of Workers of the Electricity Company of Colombia (SINTRAELECOL)
- the Union of Cali Municipal Enterprise Workers (SINTRAEMCALI) and
- the Single Trade Union Association of Public Employees of the Colombian Prison System (UTP)

Allegations: The complainant organizations allege acts of violence (murders, attempted murders and death threats) against trade union leaders and members

- 262.** The Committee has examined the substance of Case No. 2761 on four occasions [see 363rd, 367th, 380th and 383rd Reports], most recently at its meeting of October 2017, when it examined Case No. 2761 together with Case No. 3074 and submitted an interim report on both cases to the Governing Body [see 383rd Report, paras 171–193, approved by the Governing Body at its 331st session].
- 263.** The Government sent its observations in communications dated 24, 25 and 30 October 2017, 25 May 2018, and 12 February, 7 March and 8 May 2019.
- 264.** Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. Previous examination of the cases

- 265.** At its meeting on October 2017, the Committee formulated the following interim recommendations concerning the allegations presented by the complainant organizations [see 383rd Report, para. 193]:
- (a) The Committee urges the Government to continue taking all the necessary measures to ensure that all the acts of anti-union violence reported in this case are investigated and that the perpetrators and instigators are convicted.
 - (b) The Committee requests the Government to provide up-to-date information on the development of the investigations and the judicial status of every act of violence examined in this case.
 - (c) The Committee once again requests the Government to provide further information on the types of anti-union offences that were apparently not denounced in this case and that have led to recent convictions.

- (d) The Committee requests the Government to keep it informed of the results achieved by the elite group to expedite and monitor investigations.
- (e) The Committee requests the Government to provide as soon as possible information on the consultation of social partners during investigations into acts of anti-union violence in general and, in particular, on the operation of the Inter-Institutional Commission for the Promotion and Protection of Workers' Human Rights.
- (f) Pending the next examination of the case, the Committee trusts that the Government will ensure that the situation of Mr Oscar Lema has been duly assessed in order to provide him with any protective measures that he might require.
- (g) The Committee requests the Government to continue to keep it informed of the findings of the investigations conducted by the Public Prosecutor's Office in relation to the attacks on the headquarters of SINTRAEMCALI and on the vehicle of one of its leaders.
- (h) The Committee requests the Government to send as soon as possible its observations on the new allegations of murder and other acts of anti-union violence in the prison sector and to inform it of the progress made in the investigations under way.
- (i) The Committee requests the Government to ensure that the situation of the 31 trade union leaders in the prison sector who are allegedly victims of death threats has been duly assessed in order to provide them with any protective measures that they may require. The Committee requests the Government to keep it informed in this regard.
- (j) The Committee requests the Government to keep it informed of any examination of cases of anti-union violence by the bodies created as part of the peace process. The Committee requests the Government to inform it of any examination by these bodies of the aforementioned acts of anti-union violence in the prison sector.
- (k) The Committee invites the Government to maintain its efforts to ensure the safety of trade union leaders and trade unionists in the country and to continue to keep it informed in this regard.
- (l) The Committee draws the particular attention of the Governing Body to the extreme seriousness and urgency of this case.

B. The Government's response

General information regarding acts of anti-union violence and the State's response

266. In its communications of 24, 25 and 30 October 2017, the Government refers to the Inter-Institutional Commission for the Promotion and Protection of Workers' Human Rights, on which the country's main trade union confederations are represented. The Government states that, in July and August 2017, meetings with national and regional authorities were held in Bogota and Cali, led by the Minister of Labour, the Director of the National Protection Unit (UNP) and the Deputy Minister of the Interior, and with the trade union bodies affected by the violence. At those meetings the violent situations were analysed and certain investigatory and protective measures adopted. A progress report was given on the latest developments in the investigations being carried out in the departments of Valle and Cauca in connection with the acts of violence. The Government states in addition that, in order to put in place a speedier procedure for investigating, among other offences, violations of the rights of assembly and association, it promulgated Act No. 1826 of 12 January 2017, which establishes a special summary criminal procedure and regulates the status of private complainant.

267. Concerning the protective measures implemented by the Colombian State against anti-union violence, the information provided by the Government in its communications of October 2017 restates the data considered by the Committee at its last examination of the case [see 383rd Report, para. 192]. The Government also states that a 51 per cent reduction

in murders of trade unionists occurred between 2010 and 2016 and that, although the number of murders per year has fallen from 37 to 18, the total is still high, and the State is continuing its efforts to bring it down to zero.

268. In a communication of 12 February 2019, the Government sends information from the Public Prosecutor's Office updating that it provided in October 2017 on anti-union violence in the country and on the results of the corresponding investigations and criminal proceedings. The Public Prosecutor's Office states, first, that in 2018 it received 29 complaints alleging murders of trade unionists and has made significant progress in ten cases (involving sentence, at the trial stage, under investigation or at the inquiry stage under an arrest warrant) and linked them to 19 persons, of whom 14 have since been deprived of their freedom. For the period from 2011 to 2017, the Public Prosecutor's Office states that 175 complaints alleging murders of trade unionists were lodged and significant progress was made in 71 cases linked to 148 persons, of whom 131 have been deprived of their freedom. With regard to those cases, the Public Prosecutor's Office emphasizes that: (i) 44 convictions were obtained in relation to 34 cases linked to 53 persons, all of whom have been deprived of their freedom; and (ii) a further 22 cases are at the trial stage, linked to 71 persons of whom 66 have been deprived of their freedom. The Government adds that, over the period from 2011 to 2017, regardless when the offences were committed, 422 sentences were handed down for crimes of murder, kidnapping, extortion, displacement, attempted murder and conspiracy. The Public Prosecutor's Office adds that 767 sentences have been handed down since 2000 and that, since August 2016, when the elite group to expedite and monitor investigations was formed (led by the Deputy Public Prosecutor's Office and composed of several administrative bodies, and tasked with consolidating information relating to anti-union offences and developing and promoting investigation strategies), 44 convictions have been obtained for murders of trade unionists (21 for acts committed between 2011 and 2017 and 23 for acts prior to 2011). Lastly, the Public Prosecutor's Office provides data on 83 cases of murder and attempted murder reported between 2010 and 2012 in the current case (and involving 105 victims according to the Government), indicating that: (i) 71 cases remain open and the investigations into the remaining 12 have been concluded; (ii) 24 convictions have been obtained in 16 cases and 30 persons have been convicted; (iii) 14 judicial hearings have been held for 14 persons with an arrest warrant in force; and (iv) regarding the 71 active cases, 56 are at the preliminary inquiry stage, eight are under investigation and seven are at the trial stage. Regarding those results, the Public Prosecutor's Office reports that to date, owing to reorganization of the Office, the majority of cases involving victims who are trade union members are mainly being conducted by 24 public prosecutor branches across the country. While the majority of such investigations are concentrated at those branches, it should be made clear that no branch is currently working exclusively on them.

269. In the same communication of February 2019, the Government reports on the adoption of Decrees Nos 2078 and 2137 of 2018, which change the mechanisms for protecting union leaders and human rights defenders and also seek to ensure collective security for organizations under threat from armed groups. The Government mentions in particular the adoption of Decree No. 2137 of November 2018 establishing the "Commission to develop the Timely Action Plan (PAO) on Individual and Collective Prevention and Protection regarding the Rights to Life and Freedom, and the Integrity and Security, of Human Rights Defenders, Social and Community Leaders and Journalists". The Government indicates that the Commission, comprising the Office of the President, the Ministries of the Interior, Defence and Justice, the Commander of the Armed Forces, the Directors of the Police and the UNP, the High Commissioner for Peace, the Public Prosecutor's Office and the Attorney General's Office, will be responsible for coordinating all actions of State aimed at preventing and responding to incidents of violence against human rights defenders in the country. The Government also states that the National Police have adopted transitional operational

directive No. 010 of 2018, which prescribes special measures for persons, groups or communities under high or extreme risk.

270. The Government provides additional evidence relating to the application of article 200 of the Penal Code, which provides for criminal penalties against employers which violate workers' rights to freedom of association and collective bargaining. The Government states that since 2015 the Public Prosecutor's Office has worked with the Ministry of Labour and the ILO to prioritize cases which are more likely to pass rapidly through the judicial system and that, more recently, the Ministry of Labour and the new Public Prosecutor have established a work plan to tackle cases involving violation of the right of association and misuse of collective agreements. The Government indicates that, out of 1,840 complaints made between 2011 and the end of 2016 in connection with this offence: (i) 79 per cent of the criminal proceedings in these cases have concluded and the remaining 21 per cent are still active; (ii) 55 per cent cases concluded with the declaration that the conduct did not constitute a crime; and (iii) in 25 per cent of the cases either the plaintiffs voluntarily withdrew the complaints they had lodged or conciliation took place (83 cases).
271. In a communication dated 7 March 2019, the Government sent additional evidence in the form of a table provided by the ILO Subunit in the Human Rights Unit of the Public Prosecutor's Office. The table contains details for each of 83 cases of anti-union violence (79 cases of murder relating to 92 victims and four attempted murders relating to four victims) reported in the present case and regarding which the Government had previously supplied general statistics on the progress of the investigations and criminal proceedings (the information mentioned at the end of paragraph 7 of this report).
272. In a communication dated 8 May 2019, the Government updates the information provided in its earlier communications. Concerning action taken to ensure protection for trade union members at risk, the Government refers, first, to the strategy proposed for protecting the life and integrity of community leaders and human rights defenders. After recalling the adoption of Decrees Nos 2078 and 2137 of 2018, the Government notes in that regard that: (i) the Ministry of Defence strengthened its presence in territories where killings of union leaders, community leaders and union members have occurred; (ii) the High Command of the Armed Forces has created and launched the National Rapid Response System for Advancing Stabilization (SIRIE), with the aim of analysing the factors that destabilize regional security, including acts against union leaders, community leaders and human rights defenders, and taking timely and appropriate action; (iii) the national police have set up an elite corps which uses a multidimensional approach to break up the criminal organizations that attack human rights defenders, trade unionists and politicians; and (iv) the police have produced Standing Operational Directive No. 013 DIPON INSGE, "Law Enforcement Parameters under the ESPOV Strategy", which establishes law enforcement guidelines and parameters aligned with the recent regulatory reforms concerning prevention and protection for individuals, groups and communities, in particular leaders and defenders. Concerning the risk studies conducted for trade unionists, the Government points out that: (i) since the start of operation of the protection programme under the UNP, a total of 4,131 risk studies have been conducted for trade union leaders and activists for the years 2012–19; (ii) 399 risk assessments were conducted in 2018, with 232 cases found to be high-risk and 163 normal risk; (iii) to date in 2019 there have been 119 assessments, with 66 cases found to be high-risk and 53 normal risk; and (iv) the UNP currently protects 377 union leaders or activists, of whom 265 benefit from strict protection measures.
273. Concerning the efforts to tackle impunity, the Government states in its latest communication that the President of the Republic has announced the creation of a special corps of judges tasked with the speedy judicialization and exemplary sentencing of the killers of community leaders. The Government adds that in its strategic plan for 2016–20, the Public Prosecutor's Office has included the investigation of offences against trade unionists. The Government

also recalls that August 2016 saw the launch of the elite group to expedite and monitor investigations into offences against trade unionists, led directly by the Deputy Public Prosecutor's Office. The Government states that the creation of this group has made it possible to achieve internal coordination, define the cases in their entirety, and identify obstacles to investigation and the actions needed to overcome them. The Government refers, finally, to the meetings held on 29 March 2018 and 29 March 2019 by the Inter-Institutional Commission for the Promotion and Protection of Workers' Human Rights, attended by the Government (Ministries of Labour, Interior, Defence and Justice), the High Counsellor for Human Rights, the Ombudsman's Office, trade union confederations, entrepreneurs, human rights NGOs, the UNP and the Public Prosecutor's Office. Each State body presented the strategies it is using to protect human rights and tackle impunity.

274. The Government then updates the results of the investigations into murders of trade unionists. With regard to those that occurred between 2011 and 2018, the Government states that the Public Prosecutor's Office reports 193 murders and that, in those cases: (i) the clear-up rate is 42 per cent (taking into account cases where a suspect has been identified and an arrest warrant issued pending sentence); (ii) 144 persons have been deprived of their freedom; (iii) 45 sentences have been passed in 35 cases; (iv) 26 cases are at the trial stage; (v) in seven cases charges have been laid, in another seven arrest warrants have been issued; and (vi) two cases have been terminated. With regard to the 18 cases of murder reported in 2018, the Government adds that the clear-up rate rose to 50 per cent. The Government also states that, from 2001 to 2019, a total of 719 convictions were handed down for murders of trade unionists. From 2001 to 2010, 343 sentences were recorded (49.2 per cent), from 2011 to 2017 the number was 349 (49.8 per cent), in 2018 there were 21, and to date in 2019 there have been six. The Government appends a table to its communication showing the state of progress in each of the investigations into 114 murder cases and 58 acts of anti-union violence (enforced disappearance, attempted murder, injuries, threats).

275. The Government then provides updated information relating to the application of article 200 of the Penal Code (which prescribes criminal sanctions for employers that violate workers' rights to freedom of association and collective bargaining). The Government indicates that, out of 2,372 registered complaints, 2,069 cases have been concluded and the remaining 303 are still active. From those 2,069 concluded cases: (i) 19 per cent resulted in withdrawal by agreement with the employer; (ii) 55 per cent were shelved; (iii) 6 per cent resulted in conciliation; and (iv) in the remaining 20 per cent the criminal proceedings were halted, mainly on grounds of preclusion. The Government states that five initiatives taken by the Public Prosecutor's Office have made these results possible: (i) the appointment of new public prosecutors in the seven regions with the greatest concentration of cases; (ii) the adoption of the Act on summary procedure and the private complainant, which ensures that, in the exceptional case of article 200, an investigation can now be shorter and the complaint can be brought by the victim, through his or her lawyer, who acts as prosecutor; (iii) the conciliation work done in 142 cases by 18 public prosecutors; (iv) the coordination achieved among labour inspectors and public prosecutors; and (v) the special training on "rights of assembly and association" provided for the 18 public prosecutors by the Ministry of Labour and the ILO.

Allegations of anti-union violence made by SINTRAELECOL and SINTRAEMCALI

276. Concerning the allegations of SINTRAELECOL relating to the serious physical injuries sustained by the trade union leader, Mr Oscar Arturo Orozco, as the result of the violent suppression of a demonstration by the police in 2014, and to the alleged death threats against the trade union leader Mr Oscar Lema Vega, who was not afforded the protection requested, the Government states, in its communications of October 2017, that: (i) Public Prosecutor Branch No. 120 for Human Rights, based in Medellín, is in charge of investigating the

matters raised by Mr Orozco, a process which is currently at the oral hearing stage; (ii) Mr Oscar Lema Vega receives protection from the UNP which is being reassessed in the light of recent events; and (iii) two of the three complaints of death threats made by Mr Oscar Lema Vega are inactive, while one is at the preliminary inquiry stage.

277. Concerning the attacks on the headquarters of SINTRAEMCALI and the vehicle of one of its leaders (Case No. 3074), the Government states that: (i) six of the organization's leaders are covered by a collective protection scheme implemented by the UNP, their risk status having been assessed as high; and (ii) the investigations into the attack on the headquarters of SINTRAEMCALI and the arson against the vehicle belonging to Mr Reyes have been closed by the Public Prosecutor's Office because it was impossible to establish the active participants and there is no expectation that this can be achieved.

Murders and death threats in the prison sector

278. In its communications of May 2018 and February 2019, the Government provides information on the alleged murders, attempted murders and death threats against leaders and members of the Single Trade Union Association of Public Employees of the Colombian Prison System (UTP). Concerning the 21 alleged murders of UTP members, the Government submits the response of the National Penitentiary and Prison Institute (INPEC), which provides information on 19 of the murders: according to data supplied by the company responsible for occupational hazard insurance at INPEC, 11 of the murders were work-related and the remaining eight were of common origin. INPEC adds that this appraisal gives no reason to suppose any causal link to the victims' trade union activism. With regard to possible motives for the murders, the Government states that: (i) the Public Prosecutor's Office is responsible for investigating these events; and (ii) the complainant organization does not supply any evidence that the murders were a consequence of the reporting of supposed acts of corruption inside prison establishments, a matter which in any case has no relevance to the conventions on freedom of association and collective bargaining.
279. Concerning the death threats against 31 UTP leaders, the Government transmits the responses of the UNP, as the institution charged with providing suitable protection for persons subjected to threats, and of INPEC. The Government states that INPEC has developed mechanisms and procedures enabling it to ensure a proper response to threats made against its officials. These mechanisms, which must be triggered by a complaint lodged by the official who has received the threat, rely on action taken by the Penitentiary and Prison Security Group (GOSEG) which, in coordination with the UNP, evaluates and provides the necessary protection measures. On the basis of the information supplied by INPEC and the UNP, the Government provides specific details of the 31 leaders and members cited by the UTP in this case: (i) eight workers currently enjoy protection from the UNP, four of those measures having been requested by INPEC; (ii) in one case, INPEC has already taken appropriate protection measures; (iii) four risk-assessment orders initiated by the UNP have lapsed owing to the withdrawal of the person being assessed; (iv) one person, having been informed of the required self-protection procedure, failed to deliver the documents needed to begin the risk-assessment procedure with the UNP; (v) another person decided not to begin the risk-assessment process with the UNP as he was unwilling to provide the names and details of the persons implicated by the threats; (vi) three risk-assessment orders initiated by the UNP have now lapsed owing to the absence of any causal link between the threatening acts and the union work of the INPEC official; (vii) in five cases (Messrs Eleasid Durán Sánchez, Cindy Yuliana Rodríguez Layos, Franklin Excenover Gómez Suárez, Jhony Javier Pabón Martínez and Mauricio Paz Jojoa), INPEC states that the files were sent to the UNP, which can find no information on those persons in its databases; and (viii) in eight cases neither the UNP nor INPEC is able to provide any information on the person concerned (Messrs Julio César García Salazar, Roberto Carlos Correa Aparicio, Gerson Méndez, Carlos

Fabián Velazco Virama, Rafael Gómez Mejía, Helkin Duarte Cristancho, Óscar Tulio Rodríguez Mesa and Mauricio Olarte Mahecha).

C. The Committee's conclusions

280. *The Committee recalls that Cases Nos 2761 and 3074 concern allegations of numerous murders of trade union leaders and members and other acts of anti-union violence.*

General information regarding acts of anti-union violence and the State's response

281. *The Committee notes, first, the general information submitted by the Government in various communications, concerning the institutional initiatives taken to clear up acts of anti-union violence and punish the perpetrators. The Committee takes particular note that, after recalling the launch in 2016 of the elite group to expedite and monitor investigations into offences committed against trade unionists, headed directly by the Deputy Public Prosecutor's Office, the Government refers to: (i) the announcement by the President of the Republic of the creation of a special corps of judges tasked with the speedy judicialization and exemplary sentencing of the killers of community leaders; (ii) the four meetings held in July 2017 (two), March 2018 (one) and March 2019 (one) by the Inter-Institutional Commission for the Promotion and Protection of Workers' Human Rights, on which the country's main trade union confederations are represented, during which the State bodies presented the strategies they are using to protect human rights and tackle impunity; and (iii) the promulgation of Act No. 1826 of 12 January 2017, which establishes a special summary criminal procedure and is intended to put in place speedier arrangements for investigating offences including violations of the rights of assembly and association, under article 200 of the Penal Code. The Committee notes in addition the information provided by the Government concerning the institutional initiatives taken to apply article 200 of the Penal Code, which prescribes criminal penalties for acts against the freedom of association and collective bargaining in general. The Committee takes due note of the adoption of Act No. 1826 and, observing that article 200 of the Penal Code also addresses violations of the rights of association and assembly which endanger the employee's personal integrity, as well as threats of death and injury, requests the Government to inform it of the impact exerted by the special summary criminal procedure on the investigations into acts of anti-union violence.*
282. *The Committee notes further the information provided by the Government in its various communications concerning the progress made in clearing up and punishing acts of anti-union violence committed in the country. With regard to 83 cases of anti-union violence (79 cases of murder involving 92 victims and four cases of attempted murder involving four victims) reported between 2010 and 2012 in the current case, the Committee notes that: (i) 71 cases are still open and investigations have been concluded in the remaining twelve; (ii) 24 convictions have been obtained in 16 cases and 30 persons have been convicted; and (iii) out of the 71 active cases, 56 are at the preliminary inquiry stage, eight at the investigation stage and seven at the trial stage.*
283. *Concerning the results of the investigations into all acts of anti-union violence committed in the country, the Committee notes that, from 2001 to 2019, a total of 719 sentences were handed down for crimes of murder against trade unionists. The Committee also notes that, between 2011 and 2018, the Public Prosecutor's Office reported 193 murders of trade union members, in respect of which: (i) "the clear-up rate" is 42 per cent (taking into account cases where a suspect has been identified and an arrest warrant issued pending sentence); (ii) 144 persons have been deprived of their freedom; (iii) 45 sentences have been passed in 35 cases; (iv) 26 cases are at the trial stage; (v) in seven cases charges have been laid, in*

another seven arrest warrants have been issued; and (vi) two cases have been terminated. Regarding the investigations to clear up and punish acts of anti-union violence, in particular murders of trade unionists, the Committee notes finally the Government's statement that to date, owing to the reorganization of the Public Prosecutor's Office, cases involving victims who were trade union members are being conducted mainly by 24 public prosecutor branches across the country, none of which is currently working exclusively on these investigations.

- 284.** *The Committee takes due note of the significant number of sentences handed down for murders of trade unionists and the improvement in the "clear-up rate" for murders committed between 2011 and 2018, as reported by the Government. The Committee notes in particular that, with regard to the 83 cases of murder and attempted murder reported in the current case between 2010 and 2012 on which the Government provided detailed information in March 2019, ten additional convictions were handed down between February 2017 and December 2018 in connection with five of the cases. At the same time, the Committee reiterates its concern that the great majority of the many cases of murder and other anti-union acts of violence that have taken place in the country in general, and of those reported in this case in particular, remain unpunished. In this regard, concerning the cases of physical or verbal abuse against managers, employers or workers and their organizations, the Committee emphasizes that the absence of judgments against the guilty parties creates, in practice, a situation of impunity which compounds the climate of violence and insecurity. This is extremely damaging to the exercise of union activities and emphasizes the need, in a case in which judicial inquiries connected with the death of trade unionists seem to be taking a long time to conclude, for proceedings to be brought to a speedy conclusion [see **Compilation of decisions and principles of the Freedom of Association Committee**, sixth edition, 2018, paras 108 and 109].*
- 285.** *In light of the extent and persistence of the challenges facing the country as regards anti-union violence and impunity, the Committee, while taking due note of and appreciating the significant steps taken by the public authorities in this connection and the evolution of the results obtained, urges the Government to continue strengthening its efforts to ensure that all acts of anti-union violence, murders and other acts reported across the country are cleared up and both the perpetrators and instigators convicted. Taking note of the four meetings conducted by the Inter-Institutional Commission for the Promotion and Protection of Workers' Human Rights since 2016, the Committee requests the Government to continue providing information concerning, in general, the consultation of the social partners in the framework of investigation procedures relating to acts of anti-union violence and in particular relating to the functioning of the Inter-Institutional Commission.*
- 286.** *The Committee takes due note of the information sent by the Government on each of 114 murder cases and 58 other acts of anti-union violence, and requests the Government to continue providing such information. Furthermore, the Committee once again requests the Government, as in its previous examination of this case, to inform it of any examination of cases of anti-union violence by the bodies created as part of the peace process.*
- 287.** *With regard to the measures taken by the public authorities to prevent acts of anti-union violence and protect trade union members at risk, the Committee takes due note of the Government's statement concerning the strategy conducted to protect the life and integrity of community leaders and human rights defenders. The Committee notes especially in this regard the adoption of Decrees Nos 2078 and 2137, and the creation, in November 2018, of the Intersectoral Commission to develop the Timely Action Plan (PAO) on Individual and Collective Prevention and Protection regarding the Rights to Life and Freedom, and the Integrity and Security, of Human Rights Defenders, Social and Community Leaders and Journalists. The Committee also notes the latest detailed information on the protection measures actually provided for trade union members. Finally, the Committee notes the*

information provided by the Government on the number of murders of trade union members that occurred in 2018 (29 reported cases, 18 cases recorded by the Public Prosecutor's Office). While taking due note that these figures are lower than those recorded for previous periods, the Committee expresses its deep concern at the persistence with which new murders of trade unionists are being reported by the Government and at their very high numbers. The Committee recalls in this regard that freedom of association can only be exercised in a situation in which fundamental human rights are fully respected and guaranteed, in particular those relating to human life and personal safety [see *Compilation*, op. cit., para. 82].

288. In these circumstances, while taking due note of the significant steps it has taken, the Committee urges the Government to continue strengthening its efforts to afford adequate protection to all union officials and members at risk with a view to ending anti-union violence. The Committee particularly requests the Government: (i) in the framework of the PAO, to give its full attention to the protection of union members, ensuring effective participation in the mechanism by the trade union bodies and the Ministry of Labour; and (ii) in the framework of the PAO and the appropriate tripartite forums, to identify, in close collaboration with the social partners, the main causes of the anti-union violence so that policies to prevent anti-union violence can achieve greater impact. The Committee requests the Government to keep it informed in this regard.

Allegations of violence presented by SINTRAELECOL and SINTRAEMCALI

289. Concerning the allegations by SINTRAELECOL relating to serious physical injuries sustained by the trade union leader, Mr Oscar Arturo Orozco, as a result of the violent suppression of a demonstration by the police and to the death threats against the trade union leader Mr Oscar Lema Vega, who was not afforded the protection requested, the Committee notes the Government's statement that: (i) Public Prosecutor Branch No. 120 for Human Rights, based in Medellín, is responsible for the investigation into the events reported by Mr Orozco, which is now at the oral hearing stage; (ii) Mr Oscar Lema Vega receives protection from the UNP; and (iii) two of the three complaints of death threats made by Mr Oscar Lema Vega are inactive, while one is at the preliminary inquiry stage.
290. With regard to the allegations by SINTRAEMCALI (Case No. 3074) that the organization's headquarters and the vehicle of one of its leaders were set on fire in April 2014, the Committee notes the Government's statement that: (i) six officials of SINTRAEMCALI whose level of risk has been assessed as high are covered by a UNP collective protection scheme; and (ii) the investigations into the attack on the SINTRAEMCALI headquarters and the arson against the vehicle belonging to Mr Reyes have been closed by the Public Prosecutor's Office because it was impossible to identify any active participants.
291. While noting this information, the Committee regrets to observe that, five years after the events, the investigations and judicial processes launched into the various acts of anti-union violence and threats reported by SINTRAELECOL and by SINTRAEMCALI have either been closed owing to the impossibility of identifying any active subject or have not yet concluded. The Committee expresses its strong hope that the investigations and processes still under way will lead to speedy determination of the facts and to the conviction of the perpetrators and instigators. The Committee requests the Government to keep it informed in this regard.

Allegations of anti-union violence in the prison sector

292. Concerning the reported killings of 21 UTP members, three of them union leaders, between 5 June 2012 and 24 October 2016 and the attempted murder of another UTP leader on

4 June 2015, the Committee notes that the Government has sent information from INPEC in relation to 19 murders and one attempted murder which shows that, according to the body which deals with occupational hazard at INPEC, 11 of those murders and the attempted murder were work-related while the remaining eight were of common origin. INPEC adds that this appraisal gives no reason to suppose any causal link to the victims' trade union activism. As to the motives for the murders and the allegation by the complainant organization that they were the consequence of the reporting of supposed acts of corruption inside prison establishments, the Committee notes the Government's statement that: (i) the Public Prosecutor's Office is responsible for investigating the facts; (ii) the complainant organization supplies no evidence for its allegations; and (iii) in any event, the ILO Conventions on freedom of association and collective bargaining are unrelated to the complaint.

293. While noting this information, the Committee, observes with concern that, although these murders and attempted murder occurred several years ago, the Government provides no concrete information on the progress of the investigations in the charge of the Public Prosecutor's Office, and thus it would appear that, to date, none of the 22 reported acts of violence (21 murders and one attempted murder) has resulted in a conviction. The Committee notes that the allegations in this case reinforce the fact that the protection of trade union leaders and members against acts of anti-union violence taken in retaliation for reporting acts of corruption in the workplace in the legitimate exercise of the defence of the workers' professional interests is a critical element of the principle of freedom of association.
294. Based on the foregoing, and recalling once more that the absence of judgments against the guilty parties creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity, which is extremely damaging to the exercise of trade union rights [see **Compilation**, op. cit., para. 108], the Committee urges the Government to take all necessary steps to ensure that the Public Prosecutor's Office performs the necessary investigations as soon as possible to ensure that all the murders and the attempted murder of UTP leaders and members reported in the present case are cleared up and the perpetrators and instigators convicted. In this context, the Committee urges in particular that the planning and implementation of investigations should: (i) give full and systematic consideration to possible links between the murders and the victims' trade union activities, including any possible complaints of acts of corruption they may have lodged; (ii) examine possible links between separately reported murders; and (iii) establish the necessary contacts with the trade union to gather all available information. The Committee requests the Government to keep it informed in this regard. Finally, noting that the Government's reply contains no information on the alleged murder of Mr Diego Rodríguez González on 4 June 2013 and that the UTP has provided no details of the alleged murder of Mr Manuel Alfonso, the Committee requests the Government and the UTP to supply this information.
295. Concerning the alleged death threats against 31 UTP leaders, the Committee notes the Government's statement that INPEC officials who are subjected to threats, once they have reported these to the competent authorities, can be afforded effective protection both from within INPEC (GOSEG) and from the UNP. Regarding the specific allegations in this case, the Government states that INPEC and the National Protection Unit (UNP) have taken a series of steps to assess needs and provide protection for a number of UTP leaders, emphasizing that in many cases the two organizations have acted in tandem. The Committee notes that, on the basis of information provided by the UNP and INPEC, the Government indicates that: (i) eight of the 31 UTP leaders mentioned in the complaint are currently under protective measures provided by the UNP (four of those measures having been requested by INPEC); (ii) in one case, INPEC has already taken suitable protective measures; (iii) four risk-assessment orders initiated by the National Security Unit have now lapsed owing to the withdrawal of the person being assessed; (iv) one person, after being

informed of the required self-protection procedure, failed to submit to the UNP the documents needed to initiate the risk-assessment process; (v) another person decided not to begin the risk-assessment process with the UNP because he was unwilling to provide the names and details of the persons implicated by the threats; and (vi) three risk-evaluation orders initiated by the UNP have lapsed because no causal link exists between the threats and the INPEC official's trade union activities. In taking due note of this information, the Committee observes with concern that, in respect of five persons (Messrs Eleasid Durán Sánchez, Cindy Yuliana Rodríguez Layos, Franklin Excenover Gómez Suárez, Jhony Javier Pabón Martínez and Mauricio Paz Jojoa), INPEC states that the files were sent for further action to the UNP, which indicated that it was unable to find any information on those persons in its databases. The Committee also observes that, with regard to eight other persons (Messrs Julio César García Salazar, Roberto Carlos Correa Aparicio, Gerson Méndez, Carlos Fabián Velazco Virama, Rafael Gómez Mejía, Helkin Duarte Cristancho, Óscar Tulio Rodríguez Mesa and Mauricio Olarte Mahecha), the UNP has no information on those persons and INPEC is also unable to provide any. Recalling that the rights of workers' and employers' organizations can be exercised only in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and that it is for governments to ensure that this principle is respected [see **Compilation**, op. cit., para. 84], the Committee urges the Government to take steps to ensure that the risk status of Messrs Eleasid Durán Sánchez, Cindy Yuliana Rodríguez Layos, Franklin Excenover Gómez Suárez, Jhony Javier Pabón Martínez and Mauricio Paz Jojoa) is assessed immediately and they are afforded the necessary protection as soon as possible. With regard to Messrs Julio César García Salazar, Roberto Carlos Correa Aparicio, Gerson Méndez, Carlos Fabián Velazco Virama, Rafael Gómez Mejía, Helkin Duarte Cristancho, Óscar Tulio Rodríguez Mesa y Mauricio Olarte Mahecha, INPEC and the UNP state that they are not aware of any complaint of threats made against them, and the Committee therefore invites the complainant organization to contact the competent authorities in order to resolve their situation.

The Committee's recommendations

296. In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:

- (a) While taking due note of and appreciating the significant efforts made and the evolution of the results obtained, the Committee urges the Government to continue strengthening its efforts to ensure that all the acts of anti-union violence, murders and other acts reported in the country are cleared up and that both the perpetrators and instigators are convicted.**
- (b) The Committee requests the Government to inform it of the impact exerted by the special summary criminal procedure established under Act No. 1826 on the investigations into acts of anti-union violence.**
- (c) The Committee requests the Government to continue providing information concerning, in general, the consultation of the social partners in the framework of investigation procedures relating to acts of anti-union violence and in particular relating to the functioning of the Inter-Institutional Commission for the Promotion and Protection of Workers' Human Rights.**
- (d) The Committee takes due note of the information provided in respect of 114 cases of murder and 58 acts of anti-union violence and requests the Government to continue providing information in this regard.**

- (e) *The Committee again requests the Government to inform it of any examination of case of anti-union violence by the bodies created as part of the peace process.*
- (f) *While taking due note of the significant efforts made in this regard, the Committee urges the Government to continue strengthening its efforts to afford adequate protection to all union leaders and members at risk. The Committee especially requests the Government: (i) in the framework of the Timely Action Plan (PAO) to give its full attention to protecting trade unionists and to ensuring that the trade unions and the Ministry of Labour are effectively involved in this mechanism; and (ii) in the framework of the PAO and the appropriate tripartite forums, to identify, in close consultation with the social partners, the main causes of anti-union violence so that policies to prevent anti-union violence can achieve greater impact. The Committee requests the Government to keep it informed in this regard.*
- (g) *The Committee expresses the strong hope that the investigations and procedures still under way will lead to the speedy resolution of the allegations made by the Union of Workers of the Electricity Company of Colombia (SINTRAELECOL) and the Union of Cali Municipal Enterprise Workers (SINTRAEMCALI), and to the conviction of the perpetrators and instigators. The Committee requests the Government to keep it informed in this regard.*
- (h) *The Committee urges the Government to take steps to ensure that the Public Prosecutor's Office conducts the necessary investigations as soon as possible to ensure that all the murders and the attempted murder of leaders and members of the Single Trade Union Association of Public Employees of the Colombian Prison System (UTP) reported in this case are cleared up and that the perpetrators and instigators are convicted. In this regard, the Committee especially urges that the planning and implementation of the investigations: (i) give full and systematic consideration to possible links between the murders and the victims' trade union activities, including any complaints of acts of corruption that they may have lodged; (ii) examine possible links between separately reported murders; and (iii) establish the necessary contacts with the trade union to gather all available information.*
- (i) *The Committee requests the Government to provide information on the alleged murder of the UTP member, Mr Diego Rodríguez González, and also requests the UTP to provide details of the alleged murder of Mr Manuel Alfonso.*
- (j) *The Committee urges the Government to take steps to ensure that the risk status of the UTP leaders, Messrs Eleasid Durán Sánchez, Cindy Yuliana Rodríguez Layos, Franklin Excenover Gómez Suárez, Jhony Javier Pabón Martínez and Mauricio Paz Jojoa is assessed immediately and that they are afforded the necessary protection as soon as possible.*
- (k) *The Committee invites the UTP to contact the competent authorities in order to clarify the situation of the union leaders, Messrs Julio César García Salazar, Roberto Carlos Correa Aparicio, Gerson Méndez, Carlos Fabián Velazco Virama, Rafael Gómez Mejía, Helkin Duarte Cristancho, Óscar Tulio Rodríguez Mesa and Mauricio Olarte Mahecha.*

- (l) The Committee draws the particular attention of the Governing Body to the extreme seriousness and urgency of this case.*

CASE NO. 2830

DEFINITIVE REPORT

**Complaint against the Government of Colombia
presented by**

- **the National Union of Mining, Petrochemical, Bio-Diesel Fuels and Energy Industry Workers (SINTRAMIENERGETICA) and**
- **the National Union of Workers in the Metal Engineering, Machinery, Metallurgical and Railways Industry and in the Allied Marketing and Transport Sector (SINTRAIME)**

Allegations: The complainant organizations allege obstacles to the exercise of trade union rights, anti-union dismissals, harassment and the violation of collective labour agreements by several enterprises

- 297.** The complaint is contained in two communications from the National Union of Mining, Petrochemical, Bio-Diesel Fuels and Energy Industry Workers (SINTRAMIENERGETICA) and the National Union of Workers in the Metal Engineering, Machinery, Metallurgical and Railways Industry and in the Allied Marketing and Transport Sector (SINTRAIME), dated 13 November 2010 and November 2010 respectively.
- 298.** The Government sent its observations in communications dated 18 April 2011, 18 February 2013, and 5 and 12 February 2019.
- 299.** Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

- 300.** In its communication of November 2010, SINTRAIME alleges violations of freedom of association and collective bargaining by the enterprises Ingeniería Mafylm E.U. (hereinafter Enterprise A), Ferrocarriles del Norte de Colombia S.A. (hereinafter Enterprise B) and Cables de Energía y Telecomunicaciones S.A. (hereinafter Enterprise C). In addition, in a communication dated 13 November 2010, SINTRAMIENERGETICA alleges violations of trade union rights and collective bargaining by the enterprises Carbones de la Jagua S.A. (hereinafter Enterprise D) and Consorcio Minero del Cesar (hereinafter Enterprise E).
- 301.** With regard to Enterprise A, SINTRAIME states that, on 16 May 2008, 26 of the enterprise's workers, who were members of SINTRAIME, held an assembly, established a SINTRAIME office in Chiriguaná in the department of Cesar and elected an executive board, which was subsequently entered in the register. It alleges that, on 19 May, a list of demands was presented that had been approved at the assembly and, in response, the enterprise dismissed ten unionized workers, including two union officials. It also alleges that, demonstrating that the enterprise intended to close down the newly established trade union, the enterprise filed

an appeal against the decision containing the order to register the executive board. The complainant states that the territorial directorate of the Ministry of Health and Social Protection in Cesar withdrew the registration of the executive board, in violation of Constitutional Court Decision No. C-465 of 14 May 2008, according to which employers are not allowed to file such appeals and officials are not allowed to process these appeals through administrative channels and are especially not allowed to withdraw the registration of an executive board. The complainant states that such cases have to be handled by the ordinary courts and not by the administration.

302. With regard to Enterprise B, SINTRAIME alleges that, on 4 November 2008, it established the Santa Marta office, which presented a list of demands, following which the enterprise dismissed unionized workers, which led the union branch in Santa Marta to carry out a collective work stoppage from 23 March to 19 April 2009, the date when the workers were abruptly removed by the security forces. It also alleges that, between 28 May and 24 September 2009, the enterprise dismissed 33 workers and cut ties with the executive board, as a result of which several actions have been filed at the judicial and administrative levels.
303. With regard to Enterprise C, SINTRAIME alleges that the enterprise shut down some of its departments with a view to eliminating permanent work contracts in favour of recruitment through the labour intermediation model known as the associated labour cooperative with contracts of a few months' duration, in order to disregard labour rights acquired over many years. It also alleges that, as a result of the workers' refusal to avail themselves of the cooperatives, on 4 October 2010 the enterprise dismissed 70 workers and, through so-called voluntary arrangements, laid off more than 150 workers.
304. With regard to Enterprise D, SINTRAMIENERGETICA states that, on 27 April 2009, the president of the Jagua de Ibérico branch of SINTRAMIENERGETICA filed an administrative complaint against the enterprise for violating the collective agreement and that, by a decision dated 16 December 2009, the enterprise was issued with a fine for breach of the agreement. It also states that the enterprise filed an appeal in this regard and called on the union president several times between 2009 and 2010 to answer to charges, accusing him of dangerous behaviour, sabotage and verbal aggression, for which he was suspended for eight days.
305. With regard to Enterprise E, SINTRAMIENERGETICA states that, on 14 April 2010, the president of the Becerril branch of SINTRAMIENERGETICA filed an administrative labour complaint with the Ministry of Health and Social Protection for harassment of union members and union officials and for breach of the collective labour agreement signed in 2008. It alleges that the enterprise prevented union leaders from accessing the mine's facilities while they were not on their shift and harassed the workers, especially union members, into accepting voluntary retirement (requiring them to withdraw any judicial or administrative complaint against the enterprise), causing 30 workers to leave and requesting authorization from the Ministry of Health and Social Protection to dismiss more than 140 workers.

B. The Government's reply

306. In its communication dated 18 April 2011, the Government states that the allegations concerning Enterprise B are being examined by the Committee under Case No. 2710 and also that it is gathering information on the other enterprises, in relation to which the allegations were of a general nature and imprecise.
307. In its communication dated 18 February 2013, the Government sends its observations on Enterprises A and C. With regard to Enterprise A, the Government states that: (i) the

Chiriguaná Labour Inspectorate ordered the inclusion in the union register of the executive board of SINTRAIME's branch in Chiriguaná, in the department of Cesar, considering that the application was in accordance with the provisions of the law; (ii) once the parties had been notified, the enterprise filed an appeal against the administrative decision that contained the order to register the executive board; (iii) it was found that the minimum number of employees required by law had not been present at the assembly at which the executive board had been elected (the minutes of the assembly state that certain people had been present but later it was found that they had not, and that the registration had been made with false statements); and (iv) consequently, the Valledupar branch of the Ministry of Health and Social Protection cancelled the decision containing the order to register SINTRAIME's executive board at the Chiriguaná branch (this, however, did not affect the establishment by SINTRAIME of a union branch in Chiriguaná). The Government also reports that the complainant filed an administrative complaint concerning the enterprise's refusal to negotiate the list of demands that was presented to it and that, although in the first instance the enterprise was sanctioned for having refused to enter into talks on the list of demands, the enterprise appealed against that decision, which was later overturned on the grounds that the list of demands had been presented by the executive board, whose registration had been withdrawn. As for the alleged dismissals, the Government has provided a copy of the court decisions in which the labour courts dismissed the applications for reinstatement.

- 308.** Regarding Enterprise C, the enterprise states that the trade union organization has always been accepted and that it has a collective labour agreement with it that dates back many years. The enterprise states that none of the enterprise's departments have been shut down and that it does not have a relationship with any associated labour cooperative. It states that some workers availed themselves of a voluntary retirement plan offered by the enterprise after it restructured the commercial area and that other workers were dismissed by a unilateral decision of the enterprise, but in no cases were the dismissals carried out on the grounds that the workers had links to the trade union. The enterprise denies having dismissed more than 150 workers in the last ten years and states in this respect that the complainant did not present any letters of termination or provide the names of the persons who were allegedly dismissed. In relation to the alleged transfers and dismissals, the Government has provided a copy of an inspection report dated 22 February 2011, carried out as a result of a complaint filed by the complainant concerning a collective dismissal and violation of the collective agreement. In the inspection report, it is concluded that: (i) there was no violation whatsoever of the collective agreement; and (ii) although between May and October 2010 the enterprise unilaterally terminated 40 contracts and 52 workers handed in their notice of voluntary resignation, a collective dismissal cannot be considered to have taken place as in May 2010 a total of 686 workers were employed by the enterprise.
- 309.** In its communications of 5 and 12 February 2019, the Government sends its observations on Enterprises D and E as well as the observations of the enterprises themselves. With regard to Enterprise D, the enterprise indicates that 215 out of a total of 264 workers are members of SINTRAMIENERGETICA, which accounts for 81.5 per cent of union membership, and states that collective bargaining is carried out periodically with the union. The last round of bargaining was held in 2016, during which a collective agreement was reached that will be in force until April 2023. It also states, in relation to the two administrative complaints filed by the union, that although the enterprise was sanctioned, it filed an appeal against the decisions, which were overturned.
- 310.** As for Enterprise E, the enterprise states that it has always been respectful of the rights of its workers and that, although it is accused in the complaint of exercising some type of harassment against unionized workers, the Ministry of Labour, upon hearing the complaints filed against the enterprise, conducted the relevant administrative investigations, finding that there was in no way any violation by the enterprise of the labour rights of its workers, especially the right to freedom of association. The Government has attached to its reply a

copy of Decision No. 07 of 18 August 2010, in which the Labour Inspectorate concluded that there was no pressure or harassment at the workplace by the enterprise and that all the retirements were voluntary and were carried out through conciliation agreements under the auspices of the Ministry.

C. The Committee's conclusions

311. *The Committee notes that, in the present case, the complainants allege a series of anti-union acts in relation to five enterprises in various sectors. According to the Government, these acts, which include dismissals, harassment and the violation of collective labour agreements, have been the subject of administrative complaints and legal proceedings, in relation to which final decisions have been handed down.*
312. *With regard to Enterprise A and the allegation concerning the cancellation through an administrative procedure of the registration of the executive board of SINTRAIME's branch in Chiriguaná, in the department of Cesar, the enterprise's refusal to negotiate a list of demands and anti-union dismissals, the Committee notes that the Government states that: (i) the registration of the executive board was cancelled because, following an appeal filed by the enterprise, it was found that there had not been at least 25 members as is required by law present at the assembly at which the executive board had been elected (while it appeared that 26 people had participated in the assembly, it was found, through statements, that at least three of them had not been present); (ii) it was not the responsibility of the enterprise to negotiate a list of demands presented by the executive board, whose registration was withdrawn; and (iii) in the legal proceedings related to the dismissals, the labour courts dismissed the applications for reinstatement.*
313. *The Committee notes that the cancellation through an administrative procedure of the registration of the executive board of SINTRAIME's branch in Chiriguaná, in the department of Cesar, meant that, in fact, that branch was unable to negotiate the list of demands and represent the interests of its members. The Committee also notes that Decision No. C-465 of 14 May 2008 of the Constitutional Court states that the administration cannot refuse to register members of an executive board who have been appointed in compliance with the legal requirements and that, if the Ministry or the employer consider that there are grounds to reject the registration, they must bring the case before the courts, which shall rule on the matter. Although it is not clear from the complaint or from the Government's reply whether the complainant organization has initiated legal proceedings in this regard, given the time that has elapsed and in the absence of new information from the complainant, the Committee trusts that, in the light of the Constitutional Court's decision, the aforementioned principle has been fully applied in the national legal order.*
314. *With respect to Enterprise B, the Committee notes that the allegations are being examined by the Committee under follow-up Case No. 2710 and therefore it refers to the recommendations made during its last examination of the case, at its June 2017 meeting [see 382nd Report, paras 27–29].*
315. *With regard to Enterprise C and the allegation that, after shutting down some of its departments, the enterprise dismissed the workers who did not agree to work through an associated work cooperative and laid off more than 150 workers through arrangements, the Committee notes that the enterprise states that none of its departments have been shut down and that, after its restructuring of the commercial area, 38 out of a total of 47 workers in that area availed themselves of a voluntary retirement plan and another 40 workers of the enterprise (out of a total of 686) were dismissed by a unilateral decision of the enterprise, but in no cases were the dismissals carried out on the grounds that the workers had links to the trade union. The Committee also notes that the report of an inspection conducted at the enterprise concluded that the enterprise had not violated the collective agreement and that*

a collective dismissal had not taken place. Moreover, taking into account that neither in the complaint nor in the claims that led to the inspection does the complainant allege that the workers were dismissed on account of their union membership or for conducting legitimate trade union activities, the Committee will not pursue its examination of this allegation.

- 316.** *With regard to Enterprise D and the allegation that, after a fine had been imposed on the enterprise following an administrative complaint filed by the union for violation of the collective agreement, the enterprise accused the union president of dangerous behaviour and suspended him for eight days, the Committee notes that the enterprise states that 215 out of a total of 264 workers are members of SINTRAMIENERGETICA and that collective bargaining with this union is held periodically, and that the latest collective agreement was signed in 2016 and will be in force until 2023. Regarding the administrative complaints filed by the union, the Committee notes that, according to the enterprise, the enterprise filed an appeal against the decisions imposing sanctions and these decisions were overturned. In the light of the foregoing, the Committee will not pursue its examination of this allegation.*
- 317.** *In relation to Enterprise E and the allegation concerning the harassment of members and officials into accepting voluntary retirement and the breach of the collective labour agreement, the Committee notes that, according to the enterprise, the Ministry of Labour conducted the relevant administrative investigations, finding that there was no violation whatsoever by the enterprise of the labour rights of its workers, especially the right to freedom of association. The Committee notes that the Government has attached to its reply a copy of Decision No. 07 of 18 August 2010, in which the Labour Inspectorate concluded that there was no pressure or harassment at the workplace by the enterprise and that all the retirements were voluntary and were carried out through conciliation agreements under the auspices of the Ministry. Noting that neither the complaint nor the Government's reply indicate whether the complainant has filed an appeal against that decision, the Committee will not pursue its examination of the allegations relating to this enterprise.*

The Committee's recommendation

- 318.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to decide that this case does not call for further examination.*

CASE NO. 3258

INTERIM REPORT

Complaint against the Government of El Salvador presented by

- the National Confederation of Workers of El Salvador (CNTS) and
- the Trade Union Council of El Salvador (CONSISAL)

Allegations: The complainant organizations allege, on the one hand, the imposition of arbitrary conditions for registering trade union executive committees and the issuing of accreditation to their members and, on the other hand, irregularities in the appointment of worker representatives in a number of tripartite bodies

- 319.** The complaint is contained in a communication dated 28 October 2016 from the National Confederation of Workers of El Salvador (CNTS), and in two communications dated 5 June and 19 October 2017 from the Trade Union Council of El Salvador (CONSISAL).
- 320.** The Government sent its observations in a communication dated 30 April 2018.
- 321.** El Salvador has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainants' allegations

National Confederation of Workers of El Salvador

- 322.** In its communication dated 28 October 2016, the National Confederation of Workers of El Salvador (CNTS) alleges that the Ministry of Labour and Social Welfare (MTPS) is imposing arbitrary conditions, which are not specified either in the Constitution or in legislation, for registering trade union executive committees and the issuing of accreditation to their members, including the requirement to provide the payslips and individual identity documents of executive committee members. According to the complainant, the Government's intention in not granting full accreditation to executive committee members was to leave both its trade union confederation and affiliated organizations without leadership in order to obstruct their participation in tripartite and bipartite bodies and prevent the organizations concerned from demanding that the labour rights of their members be upheld in accordance with applicable collective agreements.
- 323.** The CNTS notes that, on 13 July 2016, it submitted a request for the registration of its new executive committee to the National Department of Social Organizations (DNOS) of the MTPS. On 28 July 2016, the complainant was notified in a decision issued by the DNOS that, in order to proceed with the registration of the new executive committee, the confederation had to submit a new record showing the exact number of persons present at the time voting took place, as well as an uncertified copy of the payslips or certificate of salary payment of the persons elected to the executive committee. This requirement had to be met within five working days from the day after the notification.

324. On 12 August 2016, the DNOS notified the CNTS that it was apparent from an analysis of the documents submitted that the conditions had only been partially met and that, as a result, the following vacancies remained open: (i) secretary for agricultural and environmental matters because, given that no payslip was submitted, it was not possible to verify the employment relationship between the worker and the enterprise; and (ii) organization secretary because, given that the union member elected, Mr Cesar Emilio Zetino Consuegra, works for the *Los Lagartos* agricultural production cooperative association, a limited liability enterprise, and as a casual worker in the sugar cane and coffee industry, he would be excluded from being a member of the executive committee under the terms of section 25(a) of the Labour Code.
325. In addition, the complainant alleges that, on 23 August 2016, the DNOS requested the Union of Workers in the Cotton, Synthetics, Similar or Related Industries (STIASSYC) to provide an updated list of all members of the trade union, likewise giving a deadline of five working days to provide the document.
326. With respect to the above-mentioned conditions, in the complainant's view: (i) no provisions of section 225 of the Labour Code stipulate that payslips and individual identity documents must be requested; (ii) the decision to exclude Mr Zetino Consuegra from becoming organization secretary because he was a casual worker in the sugar cane and coffee industry is erroneous pursuant to section 25(a) of the Labour Code, given that this provision has nothing to do with prohibiting casual workers from being members of union executive committees and, if that were the case, the provision would be discriminatory and contrary to articles 3 and 47 of the Constitution; and (iii) the conditions imposed on its confederation and other affiliated organizations are not found in ILO Conventions, in the Constitution of El Salvador or in legislation and, therefore, imposing such conditions would constitute an arbitrary act.

Trade Union Council of El Salvador

327. In a communication dated 5 June 2017, the Trade Union Council of El Salvador (CONSISAL) alleges that the MTPS refused to register and grant accreditation to the executive committees of 20 unions affiliated to its confederation (the Independent Union of Agricultural Workers in the San José de la Montaña Canton (SITRAM), the General Trade Union of Workers in the Fishing and Allied Industries (SGTIPAC), the Independent Union of Commercial Workers in Colonia Las Flores (SITRACOF), the Independent Union of Retail Workers in Jerusalén (SICOJ), the Independent Union of Agricultural Workers in the El Espino Canton (SITRACE), the Union of Independent Craftspersons in Santa María Ostuma (SINAISMO), the Trade Union Federation of Registered Workers of El Salvador (FESTRAIS), the Trade Union Federation of Agricultural and Commercial Workers (FESTRAC), the Western Trade Union Association of Small Retailers (ASPECO), the Association of Merchant Seafarers of El Salvador (AMMS), the Independent Union of Agricultural Workers in the Tepeagua Canton (SITRACT), the Union of Agricultural Producers in the San Felipe Canton (SIPROACASF), the Union of Independent Commercial Workers in Nueva San Salvador (SITICONSS), the Union of Agricultural Workers in the Achichilco Canton (SINTRACA), the Union of Commercial Workers in La Unión (SITRACUN), the Union of Agricultural Workers in the La Labor Canton (SITRACL), the Independent Union of Artisanal Fishers in Zacatecoluca (SINPEZ), the Independent Union of Professionals and Technicians of El Salvador (SIPROTES), the Union of Agricultural Producers in Santo Domingo (SIPROASD) and the Union of Small Agricultural Producers in the Galeano Canton (SIPEACG)), leaving them without leadership.
328. The complainant considers that the line of action taken by the DNOS is aimed at eliminating all trade unions that are not sympathetic to the Government's political aspirations, by obstructing the processes and procedures for their formation and for the election of executive

committees. The complainant considers that the imposition of conditions not provided for in labour regulations, and the subsequent ineligibility of the requests attached to the conditions, was aimed at leaving the trade unions without leadership, and further considers that the Government intends to base its measures on the provisions of sections 222, 225 and 256 of the Labour Code, sections 8(b) and 22(b) of the Act on the Organization and Functions of the Labour and Social Welfare Sector and the Special Act on Regulating the Issuance of the Individual Identity Document, and considers, with respect to the latter law, that this is not a labour regulation and therefore does not apply to the registration of executive committees and the issuing of accreditation to their members.

329. The complainant points out that the documentation required, namely photocopies of individual identity documents (or, failing this, the birth certificates or passports of each elected member), payslips (or any other document verifying the names or posts held by the workers in the places where they work, such as certificates of salary payment stamped and signed by the human resources manager of the enterprises where the elected workers carry out their duties as members of the executive committee) and the submission of a list of members (in original or photocopy, stamped and signed by all members present at the session of the general assembly at which the members of the executive committee were elected), is excessive and contains private data and classified information on each individual.
330. The complainant also states that the imposition of conditions not provided for in labour regulations is a strategy devised by the Farabundo Martí National Liberation Front (FMLN), the party in power at the time the complaint was submitted, as a way to prevent participation in the tripartite bodies by majority organizations that do not support the Government and that are part of the Salvadorian Labour Movement.
331. The complainant also alleges irregularities in the elections of worker members in various tripartite councils, referring in particular to: (i) the election of members to the National Minimum Wage Council on 5 December 2016, when the Government, far from adhering to the procedure laid down in current regulations adopted by tripartite consensus, made use of a government decree to elect four persons from pro-Government union organizations; (ii) during the May and July 2016 elections of new worker members to the governors' assembly of the Housing Social Fund, the MTPS had reportedly altered the number of members of the Union of Construction and Related Workers of El Salvador (STRACOCOS), affiliated to the complainant organization, to ensure that none of its representatives would be in the Housing Social Fund; (iii) at the same time, it reportedly increased the number of members of the Union of Construction Workers (SUTC), a pro-Government organization, resulting in the election of a representative from that union who, according to the rules of procedure, was ineligible because the person had been accused of an offence; and (iv) during the elections of worker representatives to the Higher Labour Council in 2013, after the majority of representatives appointed were from unions that were not sympathetic to the Farabundo Martí National Liberation Front, the tripartite body was left without leadership and nothing has been done to date to reactivate the Higher Labour Council.
332. In its communication dated 19 October 2017, the CONSISAL also alleges that, on 14 July, 8 and 16 August and 4 September 2017, the Union of Independent Commercial Workers in Puerto de la Libertad (SITRAINCO), the Union of Agricultural Producers in the La Esperanza Canton, San Sebastián District (SIPROACCESS), the Union of Commercial Workers in Colonia Agua Caliente (SITRACCAC) and the Independent Union of Agricultural Workers in the Chaperno Canton (SITRACH) requested the registration of their executive committees and the issuance of accreditation to their respective members. The requests were refused, leaving the organizations without leadership. The confederation requests the Committee to overturn these decisions because they are inconsistent with legislation, the Constitution and the aforementioned Conventions.

B. The Government's reply

- 333.** In its communication dated 30 April 2018, the Government refers, on the one hand, to the complainants' allegations concerning the imposition of conditions not provided for in the Constitution or legislation for registering the executive committees of first-, second- and third-level trade unions. In this connection, the Government considers that the allegations are unwarranted and baseless, given that the conditions imposed by the DNOS of the MTPS for registering executive committees can be found in domestic legal regulations. The Government indicates that the requirement to provide photocopies of the individual identity documents of the persons elected to executive committees is provided for in section 3 of the Special Act on Regulating the Issuance of the Individual Identity Document, which provides that: "the individual identity document is the official document, which is sufficient and necessary to identify unequivocally all natural persons who are nationals of El Salvador in any public or private act, both at home and abroad", this being the only valid document through which persons who are members of executive committees can be identified. Similarly, this condition would be consistent with the requirements for membership of executive committees set out in section 225(1) and (2) of the Labour Code that members should be nationals of El Salvador by birth and over the age of 18. With regard to the requirement to attach to the request the payslip or employment certificate, they are required pursuant to section 225(5) of the Labour Code, which provides that membership of an executive committee also requires members "not to be employed in positions of trust or representatives of the employer". This requirement therefore serves to corroborate the strict employment relationship between the persons elected and the institution or enterprise for which they provide their services, and emphasizes that this requirement does not apply in the case of independent unions. With regard to the requirement to provide a list of all persons present when the executive committee was elected, the Government states that this requirement is intended to verify that the members of the executive committee were actually present at the assembly in question, given that cases have been reported of elected persons not being present at the assembly during which they were elected, as well as to ensure that the number of votes matches the number of persons present at the meeting.
- 334.** The Government also indicates, with regard to the registration of the CNTS executive committee, that this confederation submitted documentation on 13 July 2017 and that documentation verifying the members of its executive committee was submitted on 7 August 2017. With regard to the registration of the executive committee of the STIASSYC, the Government notes that, on 11 December 2017, this union submitted documentation for the registration of its executive committee, that on 19 January 2018 it was notified that it had to submit a list of all its members, including their full names and copies of their individual identity documents. These documents were provided and the executive committee was registered on 31 January 2018.
- 335.** With regard to the confidentiality of documents forwarded by trade unions, the Government indicates that, in order to safeguard the extreme confidentiality of the documents requested, as well as the legal security of executive committees, the accreditations of members of executive committees should not be sent by post, and that the DNOS recently adopted a directive to notify each executive committee by telephone when their accreditation and cards are ready for collection.
- 336.** Lastly, the Government states that the trade union organizations SITRACH, SITRACCAC, SIPORACESS, SITRAINCOPI, SIPROTES and SITRACL have been left without leadership because, even though they were given time to address any shortcomings in their applications, namely to submit the individual identity documents of their executive committee members, the above unions failed to submit any of the documents requested and their applications were therefore declared inadmissible.

C. The Committee's conclusions

337. *The Committee observes that this case refers, firstly, to the alleged imposition of arbitrary conditions for registering trade union executive committees and the issuing of accreditation to their members and to the subsequent refusal of the labour administration to register the executive committees of a number of trade union organizations and, second, to alleged irregularities in the elections of worker representatives in tripartite bodies.*
338. *With regard to the alleged imposition of arbitrary conditions for registering trade union executive committees, the Committee notes that the complainants allege in general terms that: (i) the Ministry of Labour and Social Welfare (MTPS) makes the registration of executive committees dependent on the submission of the individual identity documents and payslips of members of those committees, as well as the signed list of the members of the union who were present at its general assembly; (ii) the conditions imposed are both unduly demanding and arbitrary, given that they are not provided for in legislation; and (iii) the imposition of the conditions in question were intended to obstruct the processes and procedures for the election of executive committees that did not support the Government at the time the complaint was presented and to prevent their members from being elected to various tripartite bodies. The Committee further notes, more specifically, that: (i) the National Confederation of Workers of El Salvador (CNTS) alleges that the MTPS refused to register two members of its executive committee because, firstly, it had failed to submit the payslip of a union official and, second, that another union official, elected to the post of organization secretary, only worked on a casual basis; (ii) the CNTS alleges that, on 23 August 2016, the National Department of Social Organizations (DNOS) had requested the Union of Workers in the Cotton, Synthetics, Similar or Related Industries (STIASSYC) to provide an updated list of all members of the trade union; and (iii) the Trade Union Council of El Salvador (CONSISAL) alleges that the DNOS arbitrarily refused to register and issue accreditation for the executive committees of 24 trade unions affiliated to its confederation.*
339. *The Committee observes that the Government states with regard to the alleged imposition of arbitrary conditions that: (i) section 3 of the Special Act on Regulating the Issuance of the Individual Identity Document provides that the document in question is the only valid document through which persons who are elected as members of executive committees can be identified; (ii) one of the requirements for membership of executive committees under section 225(1) and (2) of the Labour Code is for members to be Salvadoran by birth and have attained the age of majority; (iii) section 225(5) of the Labour Code provides that one of the requirements for membership of executive committees is for members not to be employed in positions of trust or representatives of the employer, hence the requirement to attach to the request the payslip and employment certificate; and (iv) the requirement for the list of those present at the assembly where the members of the executive committee were elected arises from the need to check that the persons who are members of the executive committee were present at the assembly and to verify whether the number of votes matches the number of persons present. With regard to the specific allegations concerning the refusal to register 26 executive committees, the Committee observes that the Government indicates that: (i) the executive committees of the CNTS and the STIASSYC were registered once any shortcomings in meeting the conditions imposed by the DNOS had been addressed; and (ii) the trade union organizations SITRACH, SITRACCAC, SIPORACESS, SITRAINCO, SIPROTES and SITRACL failed to submit the documentation requested and that is why they have been left without leadership.*
340. *The Committee recalls that it has already had occasion in the past to examine allegations of the imposition of excessive conditions for the registration of executive committees in El Salvador. In Case No. 3136 [see 377th Report, para. 326], the Committee had noted the Government's indication that, in order to register members of executive committees, trade*

unions should, in accordance with section 225 of the Labour Code, submit a copy of their individual identity documents and payslips to verify whether executive committee members were Salvadorans by birth and had attained the age of majority, and that they were not employed in positions of trust or representatives of the employer. On that occasion, the Committee had recalled concerning the requirement to be Salvadoran by birth that legislation should be made flexible so as to permit the organizations to elect their leaders freely and without hindrance, and to permit foreign workers access to trade union posts, at least after a reasonable period of residence in the host country [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 623].

341. The Committee therefore refers to its conclusions in Case No. 3136 concerning the requirement to be Salvadoran by birth and again expresses the hope that the Government will take all steps, including legislative measures, to ensure that section 225 of the Labour Code and its application are consistent with the right of workers to elect their representatives in full freedom. Regarding the allegation of the CNTS concerning the refusal of the labour administration to register one of its executive committee members because of the casual nature of his work, the Committee recalls that it is the prerogative of workers' and employers' organizations to determine the conditions for electing their leaders and the authorities should refrain from any undue interference in the exercise of the right of workers' and employers' organizations freely to elect their representatives, which is guaranteed by Convention No. 87 [see **Compilation**, op. cit., 2018, para. 588]. Recalling that all workers must be able to enjoy the right to freedom of association regardless of the type of contract by which the employment relationship has been formalized [see **Compilation**, op. cit., 2018, para. 327], the Committee requests the Government to take appropriate steps to ensure that, irrespective of the worker's type of contract, trade unions may freely appoint members of their executive committees. The Committee requests the Government to keep it informed in this respect.
342. As for the complainants' specific allegations regarding the refusal to register 26 executive committees, the Committee observes that: (i) the Government provides its observations on eight of the 26 trade unions concerned, indicating that two executive committees were registered once any shortcomings in meeting the conditions imposed by the labour administration had been addressed, while the applications of the other six organizations were declared inadmissible due to the failure to submit the documentation required; and (ii) it is clear from the above, as well as from the complainants' allegations, that most of the trade unions mentioned in the complaint have been left without leadership. Considering that the accreditation procedures for workers' organizations and their executive committees should include formal verifications carried out expeditiously and in a consistent manner, the Committee requests the Government, in consultation with the most representative trade union organizations, to take the necessary steps to review the rules applicable to the registration of executive committees in order to guarantee the right of organizations to elect their representatives in full freedom and to ensure a swift process. In the light of the foregoing, the Committee requests the Government, in consultation with the organizations concerned, to expedite the pending registrations of the executive committees of the trade unions mentioned in this case. Reminding the Government that it can avail itself of ILO assistance, the Committee requests the Government to keep it informed in this regard.
343. Concerning the steps taken by the Government to exclude trade unions that do not support the Government from various tripartite bodies, and the irregularities in the appointment of worker representatives in those bodies, alleged by the CONSISAL, the Committee notes that, according to this complainant: (i) during the elections of the National Minimum Wage Council, on 5 December 2016, the Government, ignoring the institution's regulations adopted by tripartite consensus, elected four persons from pro-Government trade unions; (ii) during the elections of governor members of the Housing Social Fund, the Government had altered the number of members of the Union of Construction and Related Workers to

prevent any of its representatives from participating in that body and had increased the number of members from a pro-Government trade union with the aim of increasing its representation in the governors' assembly; and (iii) during the elections of worker representatives to the Higher Labour Council, after the appointment of a majority of representatives from trade unions that were not pro-Government, the tripartite body was left without leadership, and nothing has been done to date to remedy the situation.

344. While noting that the Government did not transmit its observations on this matter, the Committee observes that the allegations made by the complainant relating to the suspension of the Higher Labour Council are still being examined by the Committee in Case No. 3054. In this case, the Committee underlined the urgent need for in-depth consultations with the confederations and federations in order to establish clear and stable rules for the appointment of worker representatives to the CST (particularly when there is no single list of worker representatives) which respect the criterion of representativeness and requested the Government to keep it informed in this regard. Taking into account the urgency of this situation the Committee also invited the Government to accept an ILO technical assistance mission to help in finding a solution to the issues raised [see 375th Report, para. 328]. Observing that the ILO has been providing technical assistance to the Government in respect of the determination of criteria to establish trade union representation, the Committee refers to its recommendations in Case No. 3054 and urges the Government to reactivate the Higher Labour Council as soon as possible.
345. With regard to the alleged irregularities in the appointment of worker representatives to the National Minimum Wage Council and the Housing Social Fund, the Committee recalls that it has already had occasion to examine similar allegations in Case No. 2980 a case brought by an employers' organization. In that case, the Committee requested the Government to ensure that the representatives of workers' and employers' organizations on tripartite bodies are appointed by them freely, and that in-depth consultations are urgently held with those organizations within the Higher Labour Council, so that mutual agreement can be reached on ensuring the balanced tripartite composition of the management boards of the autonomous institutions referred to in the complaint (notably the ISSS, the FSV and the NIVT), and that the shared decision so reached is submitted without delay to the Legislative Assembly in the course of its examination of the legislative reform previously proposed by the Government. [see 368th Report, para. 321]. Regretting that no progress has been made in that respect, the Committee insists, once again, that pre-established, precise and objective criteria for the determination of the representativity of workers' and employers' organizations should exist in the legislation and such a determination should not be left to the discretion of governments [see *Compilation*, op. cit., para. 530]. In view of the above, the Committee urges the Government to respond without delay to the allegations made by the complainant regarding the appointment of worker representatives in the National Minimum Wage Council and the Housing Social Fund. The Committee also expresses the hope that the Government will ensure that the appointment of worker representatives to tripartite bodies will be based on objective, precise and pre-established criteria on representativity, and that any dispute as to the appointment of those representatives will be resolved by an independent body. Regretting that this situation has persisted for years, and reminding the Government that it can continue to benefit from the Office's technical assistance, the Committee requests the Government to keep it informed in this regard.

The Committee's recommendations

346. *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee refers to its conclusions in Case No. 3136 regarding the requirement to be Salvadoran by birth and again expresses the hope that the*

Government will take all steps, including legislative measures, to ensure that section 225 of the Labour Code and its application are consistent with the right of workers to elect their representatives in full freedom.

- (b) The Committee requests the Government to take appropriate steps to ensure that, irrespective of the worker's type of contract, trade unions may freely appoint members of their executive committees. The Committee requests the Government to keep it informed in this respect.*
- (c) The Committee requests the Government, in consultation with the most representative trade union organizations, to take the necessary steps to review the rules applicable to the registration of executive committees in order to guarantee the right of organizations to elect their representatives in full freedom and to ensure a swift process. Reminding the Government that it can avail itself of ILO technical assistance, the Committee requests the Government to keep it informed in this regard.*
- (d) The Committee requests the Government, in consultation with the organizations concerned, to expedite the pending registrations of the executive committees of the trade unions mentioned in this case. The Committee requests the Government to keep it informed in this regard.*
- (e) With regard to the suspension of the Higher Labour Council, the Committee refers to its recommendations in Case No. 3054 and urges the Government to reactivate the Higher Labour Council as soon as possible.*
- (f) As for the alleged irregularities in the appointment of worker representatives to the National Minimum Wage Council and the Housing Social Fund, the Committee urges the Government to respond without delay to the allegations made by the complainant and expresses the hope that the Government will ensure that the appointment of worker representatives to tripartite bodies will be based on objective, precise and pre-established criteria on representativity, and that any dispute as to the appointment of those representatives will be resolved by an independent body. Regretting that this situation has persisted for years, and reminding the Government that it can continue to benefit from the ILO technical assistance, the Committee requests the Government to keep it informed in this regard.*

CASE NO. 3284

DEFINITIVE REPORT

**Complaint against the Government of El Salvador
presented by**

- **the Union of Municipal Workers of Nueva Concepción (SITMUNC)**
and supported by
- **the Trade Union Federation of Municipal Workers of El Salvador (FESISTRAM)**

Allegations: The complainant organizations allege the anti-union nature of the transfer of four union officials from a municipal trade union, as well as the dismissal of 18 workers

347. The complaint is contained in a communication dated 3 May 2017 from the Union of Municipal Workers of Nueva Concepción (SITMUNC), supported by the Trade Union Federation of Municipal Workers of El Salvador (FESISTRAM).
348. The Government sent its observations in a communication dated 1 June 2018.
349. El Salvador has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainants' allegations

350. In its communication dated 3 May 2017, the complainants allege that, despite the agreements concluded between the SITMUNC and the municipal authority of Nueva Concepción following the end of a strike movement, the union and its members were subjected to anti-union acts by the municipal council, and refer in particular to the transfer of four union officials.
351. The complainants state that, on 4 April 2016, against the backdrop of a strike, representatives of the municipal authority and SITMUNC took part in a mediation session chaired by members of the clergy of the church of the Immaculate Conception of Mary with a view to ending the labour dispute dividing the above-mentioned parties and to lifting the strike. According to the complainants, during the session it was agreed that the municipal authority's work would resume, in exchange for the establishment of ongoing round-table talks, and that this round table would include representatives of the workers and the mayor's office. During the mediation session, SITMUNC also proposed the inclusion of certain items on the agenda, including the reinstatement of unfairly dismissed workers, the functioning of the committee overseeing the law on public employment, and guarantees that the striking workers would not face retaliatory financial penalties or other reprimands by the employer.
352. The complainants allege that, despite the above-mentioned agreement, the mayor and his municipal council systematically harassed and intimidated the members of the union's executive committee and allege in that regard that: (i) on 28 April 2016, the members of the municipal council and municipal authority agreed on the transfer of Ms Celita Armida Rodríguez Hércules, secretary-general of the executive committee, Ms Katya Lissette Tejada, deputy disputes secretary, Ms Rosa Elena Tobar de González, social security and welfare secretary, and Mr Jesús Alberto González García, press and public relations

secretary; (ii) on 8 August 2016, the union filed applications for *amparo* (protection of constitutional rights) against the decisions to transfer the union officials; (iii) on 8 September 2016, the municipal council voted in favour of levying a sanction of 15 days without pay against the union officials targeted by the transfer measures; (iv) on 9 January 2017, the suspension was approved by the committee overseeing the law on public employment; and (v) the union officials were suspended from 6 to 20 February 2017. In the complainants' view, both the transfers and the sanction of 15 days without pay imposed on the four union officials are incompatible with section 47(6) of the Constitution of El Salvador relating to trade union immunity, which provides that members of union executive committees cannot be dismissed, suspended for disciplinary reasons, transferred or given less favourable employment conditions other than for a just cause as previously determined by the competent authority.

353. Lastly, the complainants refer to the unfair dismissal of 18 town hall workers, against which applications for *amparo* were filed with the constitutional chamber of the Supreme Court. A final decision on these proceedings is still pending.

B. The Government's reply

354. In its communication dated 1 June 2017, the Government indicates that, as municipal workers are excluded from the Labour Code, the regulation that applies to this category of workers is the law on public employment. Under section 21(3) of this law the municipal commissions have the power to deal with complaints from municipal officials and employees concerning violations of their rights by their hierarchical superiors. With regard to national jurisprudence, the Government indicates that there is a ruling (administrative proceedings case No. 110-2013) establishing that the Ministry of Labour should refrain from carrying out inspections into violations of labour rights in the municipal authorities as they do not have the competence in this regard. However, the Government indicates that the Ministry of Labour and Social Welfare's General Directorate of Labour Inspection does have the power to carry out occupational safety and health inspections. Therefore, at the request of the complainant union, on 13 December 2016 the inspectorate carried out an assessment of psychosocial risks relating to the alleged harassment to which the members were subjected by their employer. The Government indicates that, after the inspection, which included workplace visits and interviews with both the employer and the workers, which reported "the existence of a tense atmosphere between management and union members", the local authority was sanctioned for non-compliance with the obligation to develop and implement an occupational risk prevention management programme as required under section 79(3) of the general law on the prevention of workplace risks. The Government emphasizes that, as part of this investigation, eight recommendations were made on addressing and preventing psychosocial risks in the workplace. It further notes that, in order to minimize the negative effects of work and put adequate measures in place to ensure that labour relations are beneficial and respectful, initiatives were proposed to establish round-table talks and provide facilities to enable worker representatives to carry out their duties. The Government indicates that, according to the reinspection report, the employer subsequently complied with the obligation to develop and implement the respective occupational risk prevention management programme.

355. Lastly, concerning the *amparo* proceedings mentioned by the complainants, the Government indicates that: (i) regarding the application for *amparo* filed for the unfair dismissal of the 18 municipal workers, the constitutional chamber of the Supreme Court ordered the case to be dismissed on the grounds that the applicant withdrew the appeal; and (ii) regarding the applications for *amparo* filed by the union officials against the transfer decisions, the Supreme Court declared them inadmissible.

C. The Committee's conclusions

356. *The Committee observes that this case relates to allegations of harassment and anti-union acts against SITMUNC members, in particular the transfer and suspension of four union officials and the dismissal of 18 municipal workers.*
357. *The Committee notes the allegations of the complainants claiming that: (i) against the backdrop of a strike within the municipal authority of Nueva Concepción, a mediation session took place on 4 April 2016 between the municipal authority and the complainant union with a view to ending the labour dispute between the parties and lifting the strike; (ii) during the mediation session it was agreed that work would resume, in exchange for the establishment of ongoing round-table talks that would include representatives of the employer, workers and alternate members; (iii) the mayor's office and the municipal council continued to harass members of the complainant union's executive committee, and the complainants referred in particular to the municipal authority's decision to transfer four union officials (Ms Celita Armida Rodríguez Hércules, secretary-general of the executive committee, Ms Katya Lissette Tejada, deputy disputes secretary, Ms Rosa Elena Tobar de González, social security and welfare secretary, and Mr Jesús Alberto González García, press and public relations secretary), and the union officials in question filed applications for amparo against this decision; (iv) on 9 January 2017, the committee overseeing the law on public employment approved a sanction of 15 days without pay against the four union officials, who were suspended from 6 to 20 February 2017; and (v) 18 municipal workers were unfairly dismissed and, in response, applications for amparo were filed with the constitutional chamber of the Supreme Court.*
358. *The Committee notes that, for its part, the Government states that: (i) municipal workers are governed by the law on public employment and that under section 21(3) of this law the municipal commissions, and not the labour inspectorate, have the power to deal with complaints from municipal officials and employees concerning violations of their rights by their hierarchical superiors; (ii) however, the Ministry of Labour and Social Welfare's General Directorate of Labour Inspection does have the power to rule on occupational safety and health issues; (iii) following the request of the complainant union for an assessment of psychosocial risks relating to the alleged harassment against union members to be conducted, the aforementioned body carried out an inspection; and (iv) as a result of the inspection, in addition to the issuance of an infraction report, recommendations were made on addressing and preventing psychosocial risks in the workplace and, with a view to fostering beneficial and respectful labour relations, initiatives were proposed to establish round-table talks with the union and provide facilities to enable worker representatives to carry out their duties.*
359. *The Committee further notes the information provided by the Government on the status of the legal proceedings initiated relating to the facts alleged in this case, according to which: (i) on 12 May 2017, the constitutional chamber of the Supreme Court declared inadmissible the applications for amparo filed by the union officials concerning their respective transfers, finding that the applicants had not proven the existence of a constitutional violation against them; and (ii) regarding the unfair dismissal of 18 municipal workers, on 16 August 2017, the constitutional chamber of the Supreme Court ordered the case to be dismissed on the grounds that the applicant had withdrawn the appeal.*
360. *Concerning the transfer of the four SITMUNC union officials, the Committee observes that the information and documents provided by the complainants and the Government indicate that: (i) twenty-four days after the end of the strike movement within the municipal authority, Mr Jesús Alberto González García was transferred from the mayor's office to the warehouse, Ms Celita Armida from the mayor's office to the municipal treasury, Ms Katya Lissette Tejada to elsewhere within the town hall and Ms Rosa Elena Tobar de González*

from the mayor's office to the facilities of the house attached to the town hall; (ii) the labour inspectorate, given that it does not have the competence to examine compliance with legislation on trade unions in the public administration in general and in the municipal authorities in particular, did not examine the alleged anti-union nature of the transfers; and (iii) the constitutional chamber of the Supreme Court considered itself unable to verify the constitutionality of the transfers and declared inadmissible the applications for amparo filed by the union officials affected. The Committee observes in this regard that, in its ruling, the Court found that the applicants had not been subject to a violation of their constitutional rights, given that the transfers had not affected their hierarchical status, that their salaries had remained unchanged and that they had not been able to prove how the transfers had affected their ability to carry out their union activities. On those grounds, the Court decided not to examine the merits of the appeals.

- 361.** *The Committee observes that it is clear from the foregoing that the grounds for the municipal authority's decision to transfer the four union officials, and the alleged anti-union nature of the reprisal, were not examined by either the labour inspectorate or as part of the aforementioned applications for amparo. The Committee also notes that they were the subject of an administrative sanction. The Committee recalls that, in a previous case involving El Salvador [see 362nd Report, November 2011, Case No. 2836, para. 695], after noting that the Ministry of Labour and Social Welfare does not have the competence to deal with the claims of anti-union acts that are the subject of the complaint as they relate to situations that occurred in the public sector, it had considered that an independent authority should be in a position to investigate the allegations of anti-union discrimination in order to gather sufficient evidence to support the case when it is brought before the jurisdictional authorities.*
- 362.** *In the light of the above and recalling that basic regulations that exist in the national legislation prohibiting acts of anti-union discrimination are inadequate when they are not accompanied by procedures to ensure that effective protection against such acts is guaranteed [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1140], the Committee requests the Government, in consultation with the social partners from the sector, to take the necessary steps, including legislative measures if necessary, to ensure that the workers in the municipal authorities have access to adequate protection mechanisms against acts of anti-union discrimination. The Committee refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations.*
- 363.** *With regard to the allegations of the unfair dismissal of 18 local authority workers, the Committee notes that the Government indicates that the constitutional chamber of the Supreme Court decided to dismiss the case on the grounds that the applicant withdrew the appeal. In the light of the foregoing and noting furthermore that the complainants merely indicated that the dismissals in question were unfair, without specifying whether the workers concerned were union members or providing any other details regarding the circumstances of the breaches of contract, the Committee will not pursue its examination of this allegation.*

The Committee's recommendations

- 364.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:*

The Committee requests the Government, in consultation with the social partners from the sector, to take the necessary steps, including legislative measures if necessary, to ensure that the workers in the municipal authorities have access to adequate protection mechanisms against acts of anti-union

discrimination. The Committee refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations.

CASE NO. 3290

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

**Complaint against the Government of Gabon
presented by
the National Organization of Oil Industry Employees (ONEP)**

Allegations: Interference by the Government in the functioning of the National Organization of Oil Industry Employees (ONEP), exclusion of this trade union from the collective bargaining process, obstruction of the right to strike, and undue deployment of the police

- 365.** The present complaint is contained in a communication dated 29 May 2017 from the National Organization of Oil Industry Employees (ONEP). The complainant organization provided additional information in communications dated 12 August 2017 and 30 January 2018.
- 366.** The Government sent its observations on 5 March 2018 and 15 May 2019.
- 367.** Gabon has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

A. The complainant's allegations

- 368.** In a communication dated 29 May 2017, ONEP alleges that it was excluded from a collective bargaining process under the dual influence of the Maurel & Prom oil company (hereinafter: the enterprise) and the Government, to the benefit of a group of unelected workers. The complainant organization indicates that, following a strike launched by ONEP at the enterprise, a facilitation agreement was signed on 11 March 2017 between ONEP, the enterprise and the ministers for labour and the oil industry to resume collective bargaining. The complainant alleges that, on 15 March 2017, in violation of the agreement signed on 11 March, the above-mentioned government ministers demanded that ONEP, while collective bargaining was in progress, provide proof of its legality and legitimacy with regard to defending the interests of enterprise employees before any continuation of discussions, further to the resignation of certain members of the ONEP national executive committee and a drop in the number of union members who were up to date with the payment of their dues. ONEP considers that this demand constitutes an act of interference and discrimination that violates freedom of association. It rejects the Government's claim that the union's executive committee currently comprises three officers out of the ten stipulated in the union rules, whereas these rules require executive committee decisions to be adopted by a simple majority to be valid, in other words by six members (five members plus one).

- 369.** The complainant organization explains that its national executive committee, which was elected at its congress on 14 September 2013 for a four-year term, lost four of its officers through resignation, namely: (i) the national secretary for regulations, external relations and communication, in October 2014; (ii) the national secretary for the budget and finance, in December 2014; (iii) the national secretary for education and training, in June 2015; and (iv) the general secretary, in June 2016. However, on 13 March 2016, the first three of the above-mentioned officers were replaced, in accordance with section 60 of the union rules, as attested to by the memorandum of 14 March 2016, which was disseminated to the ONEP membership. As regards the post of general secretary, section 25 of the union rules provides that, in the event of prolonged absence or unavailability of the general secretary for whatever reason, formally notified by the latter, the deputy general secretary shall act as a replacement in the meantime.
- 370.** In response to the Government's allegations that ONEP lost a number of members because they were no longer up to date with the payment of their union dues, the complainant organization explains, referring to its union rules, that any failure to pay dues shall only result in loss of ONEP membership if thus decided by the union's national council.
- 371.** Moreover, ONEP denounces the acts perpetrated by the police and security forces against employees who were on strike at the enterprise's onshore site on 23 February 2017, despite the fact that plant safety was maintained and the site was operational through the minimum service which had been established. The union states, with supporting photos, that the police and security forces (equipped with firearms, tear-gas canisters, balaclavas and truncheons) violently dispersed the workers on the strike picket without any valid reason, injuring a number of workers, four of whom had to be taken to hospital, and alleges that the strikers – comprising all the staff of Gabonese nationality (90 per cent of the workforce) – were taken in army trucks from the workplace (a production plant) to a location more than 5 km away in the forest.
- 372.** In a communication dated 12 August 2017, the complainant organization indicates that the Court of Appeal in Port-Gentil issued a temporary injunction on 23 March 2017, rejecting the claim that ONEP lacked legal capacity to act owing to a flaw in the composition of its executive committee because the enterprise had not supplied any proof.
- 373.** In a communication dated 30 January 2018, ONEP indicates that, in the context of a dispute between ONEP and the Petroleum Products Storage Corporation of Gabon (SGEPP), the minister for the oil industry again challenged the legitimacy of the current ONEP executive committee and stated that he wished to hold direct discussions with the group of staff representatives. Another example cited in support of the complaint concerns the collective dispute between ONEP and the company Eurest Support Services SA, in which the minister for the oil industry was only willing to deal with the staff representatives, who, after refusing to accept any invitation without the presence of ONEP, were reprimanded and even threatened with removal from office.

B. The Government's reply

- 374.** In a communication dated 5 March 2018, the Government reviews the background of the matter at issue. The Government explains that ONEP gave notice of the strike to the enterprise on 15 February 2017 and negotiations relating to it were initiated under the supervision of the ministries responsible for labour and the oil industry. During the negotiations, ONEP decided on an indefinite strike and there were several instances of physical assault and abuse endangering the operations of the enterprise and the freedom to work. The enterprise management therefore had recourse to the courts to challenge the declaration of an indefinite strike and seek to have it revoked. The interim relief judge, by an injunction of 25 February 2017, ordered the revocation of the strike declaration, having

established non-compliance with section 343 of the Labour Code and, in particular, a failure to establish a minimum service and having considered that the strike constituted a manifestly unlawful disturbance on the premises of the enterprise. This order was upheld by the ruling of 25 April 2017 of the Port-Gentil Court of Appeal. The Government observes that ONEP did not seek a review of the appeal ruling and indicates in its communication dated 15 May 2019 that legal proceedings have been closed.

375. The Government declares on two occasions that its intervention in the dispute between the enterprise and ONEP took place at the request of the enterprise management pursuant to the judicial ruling issued in this matter and with the sole purpose of maintaining the instruments of work of this enterprise operating in a key sector of the national economy.
376. As regards the allegation of a violation of collective bargaining, the Government indicates, producing correspondence dated 26 November 2016 and 13 February 2017 relating to this matter, that it was at the explicit request of ONEP that the enterprise management removed from office all the staff representatives previously elected under the ONEP banner. Since they now had nobody to represent them in the negotiations in progress, the employees signed a petition to continue the negotiations “without ONEP” and appointed ten members from among their colleagues, including three representative spokespersons. It was these three spokespersons who signed the collective labour dispute conciliation agreement, dated 22 March 2017. The Government observes that its action in this process was solely on the grounds that the parties needed support in the planned negotiations and, in particular, that the enterprise management needed a legitimate discussion partner in the context of the negotiations.
377. The Government considers that ONEP’s conduct was aimed at serving particular interests, to the detriment of those of the employees, going so far as to undermine the structure and balance of the enterprise, and that in many cases the employees did not identify with the demands made and strikes initiated by ONEP. As proof of this, the Government cites the recent case at the SGEPP, where the employees distanced themselves from the strike launched by ONEP, and refers in support of its argument to a note dated 25 January 2018 from the special labour inspectorate responsible for the oil industry.

C. The Committee’s conclusions

378. *The Committee notes that the complainant organization’s allegations relate to: (i) interference by the Government in the functioning of the National Organization of Oil Industry Employees (ONEP) and the exclusion of this trade union from the collective bargaining process; and (ii) obstruction of the right to strike and undue deployment of the police.*
379. *As regards the allegations of government interference in the functioning of ONEP and the exclusion of this trade union from the collective bargaining process, the Committee notes that the complainant organization alleges that: (i) following the strike action launched by ONEP at the oil enterprise, a facilitation agreement was signed on 11 March 2017 by ONEP, the enterprise and the ministers for labour and the oil industry to resume collective bargaining and that; (ii) on 15 March 2017, the aforementioned government ministers demanded that ONEP, while collective bargaining was in progress, provide proof of its legality and legitimacy with regard to defending the interests of enterprise employees before any continuation of discussions, further to the resignation of certain officers of the ONEP national executive committee and a drop in the number of union members who were up to date with the payment of their dues. In this regard, the Committee notes the contradictory observations brought to its attention: according to the Government, the current ONEP executive committee has three officers out of the ten stipulated by the union rules, which prevents it from achieving the required majority for taking decisions, whereas ONEP states*

that all the members who had resigned were replaced by 13 March 2016, except for the general secretary, whose duties are being performed by the deputy general secretary, in accordance with union rules.

- 380.** *The Committee notes that the conciliation agreement of 22 March 2017 states that “instead of ONEP, which has been unable, at the request of members of the Government, to give proof of its legitimacy or legality for defending the interests of the employees [of the enterprise], the latter have freely appointed, further to general assemblies, ten representatives including three spokespersons”. The Committee observes that 11 days earlier neither the Government nor the enterprise, both of which were signatories to the facilitation agreement of 11 March 2017, had raised such an objection, and the facilitation agreement had been signed by the ONEP deputy general secretary. The Committee notes in this regard that the information concerning the replacement of the members who had resigned from the ONEP national executive committee, as communicated in the context of the present complaint, was not brought to the attention of the other signatories by the complainant, since the latter considered it a case of interference in the union’s internal affairs, especially as the Government’s request also related to proving the number of union members who were up to date with the payment of their dues.*
- 381.** *The Committee also observes, according to the information supplied by the Government, that: (i) ONEP, by communications dated 26 November 2016 and 13 February 2017, asked the enterprise management to remove from office on disciplinary grounds all the staff representatives elected under the ONEP banner; (ii) since they no longer had anybody to represent them in the negotiations in progress, the employees signed a petition to continue the negotiations “without ONEP” and appointed ten members from among their colleagues, including three representative spokespersons; and (iii) it was these three spokespersons who signed the collective labour dispute conciliation agreement, dated 22 March 2017.*
- 382.** *The information brought to the Committee’s attention by the Government shows that the issue of legitimacy for representing workers at the enterprise seems to involve the composition of the national executive committee, the presence of ONEP representatives at the enterprise (without making it clear whether the latter had already been removed from office in March 2017), and the status of ONEP members, since one of the conditions laid down by the Government for the continuation of negotiations with ONEP was the need for the union to indicate whether its members were up to date with the payment of their dues.*
- 383.** *The Committee considers that the latter question cannot be a prerequisite for the continuation of negotiations, including on the grounds that the union rules provide that any failure to pay dues shall only result in loss of membership if thus decided by the ONEP national council, the union’s supreme authority in the interval between congresses. The Committee wishes to recall that workers and employers should in practice be able to freely choose which organization will represent them for purposes of collective bargaining [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1359]. However, the Committee observes that the issue of the removal from office of the staff representatives elected under the ONEP banner, at the union’s own request, created additional confusion regarding the legitimate representation of the workers. Lastly, the Committee notes the complainant organization’s indication that the Port-Gentil Court of Appeal issued an injunction on 23 March 2017 rejecting, for lack of proof, the claim that ONEP lacked legal capacity to act owing to a flaw in the composition of its executive committee. The Committee requests the Government and the complainant organization to indicate whether any appeal has been lodged against this decision.*
- 384.** *As regards the issue of violence perpetrated by the police at the enterprise’s onshore site on 23 February 2017, the Committee notes ONEP’s allegation, with supporting photos, that the police and security forces violently dispersed the workers on the strike picket without any*

valid reason, injuring a number of workers, four of whom had to be taken to hospital, and that the strikers - comprising all the staff of Gabonese nationality (90 per cent of the workforce) - were taken in army trucks from the workplace (a production plant) to a location more than 5 km away in the forest.

- 385.** *The Committee notes that the interim relief judge, by an order of 25 February 2017, ordered the revocation of the strike declaration, finding non-compliance with section 343 of the Labour Code and in particular that no minimum service had been established and that the strike constituted a manifestly unlawful disturbance on the premises of the enterprise. The Committee notes that this order was upheld by the ruling of 25 April 2017 of the Port-Gentil Court of Appeal and that ONEP did not seek a review of the appeal ruling, as reaffirmed by the Government in its communication dated 15 May 2019.*
- 386.** *Without prejudice to the foregoing, the Committee notes that the Government limits itself to indicating that its intervention in the dispute between the enterprise and ONEP took place at the request of the enterprise management pursuant to the judicial ruling issued in this matter and with the sole purpose of maintaining the instruments of work of this enterprise operating in a key sector of the national economy. Observing that the Government has not supplied any details of the violence denounced by the complainant organization, the Committee wishes to recall that the authorities should resort to calling in the police in a strike situation only if there is a genuine threat to public order. The intervention of the police should be in proportion to the threat to public order and governments should take measures to ensure that the competent authorities receive adequate instructions so as to avoid the danger of excessive violence in trying to control demonstrations that might undermine public order [see **Compilation**, op. cit., para. 935]. In view of the serious nature of the allegations and the lack of information provided by the Government on this point, the Committee requests the authorities to open an independent investigation without delay to fully establish the facts, apportion responsibility, punish the perpetrators and prevent any repetition of such actions, and requests the Government to keep it informed in this regard.*

The Committee's recommendations

- 387.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee requests the Government and the complainant organization to indicate whether any appeal has been lodged against the injunction of 23 March 2017 rejecting, for lack of proof, the claim that the National Organization of Oil Industry Employees (ONEP) lacked legal capacity to act owing to a flaw in the composition of its executive committee.*
 - (b) With regard to the violence committed against the strikers at the onshore site of the enterprise on 23 February 2017, the Committee requests the authorities to open an independent investigation without delay to fully establish the facts, apportion responsibility, punish the perpetrators and prevent any repetition of such actions, and requests the Government to keep it informed in this regard.*
 - (c) The Committee requests the Government to ask the employers' organizations concerned to provide information, if they so wish, so that their version of events and that of the enterprises concerned in relation to the issues under examination can be obtained.*

**Complaint against the Government of Guatemala
presented by
the Indigenous and Agricultural Workers' Trade
Union Movement of Guatemala (MSICG)**

Allegations: The complainant alleges that the reform of the Public Prosecutor's Office in 2016 violates the principles of freedom of association and collective bargaining because it is considered that there are incompatibilities between the functions of public servant of the Public Prosecutor's Office and union leader and because it fails to comply with various clauses of the collective agreement on working conditions in that Office

- 388.** The complaint is contained in two communications dated 11 April 2016 and 6 February 2018 from the Indigenous and Agricultural Workers' Trade Union Movement of Guatemala (MSICG).
- 389.** The Government sent its observations in communications dated 17 July 2017, 15 November 2018 and 1 May 2019.
- 390.** Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

- 391.** In its communications dated 11 April 2016 and 6 February 2018, the MSICG alleges that various aspects of Decree No. 18-2016, through which the Government passed a series of reforms to the Organic Law governing the Public Prosecutor's Office (Decree No. 40-94), violate the principles of freedom of association and collective bargaining and the corresponding ILO Conventions that Guatemala has ratified. The complainant reports, firstly, that although the establishment of the Special Investigation Unit for Crimes against Trade Unionists has been the subject of repeated communications from the Government to the ILO, in practice the requisite trained staff has not been assigned to the Unit, nor has it been provided with the infrastructure and the conditions necessary for it to become operational. Furthermore, the complainant indicates that by reforming article 30 of the Organic Law governing the Public Prosecutor's Office, article 18 of Decree No. 18-2016 establishes the organization of the Public Prosecutor's Office and sets up 22 divisional prosecutor's offices, but does not include an office for crimes against trade unionists, which in its opinion presupposes that the current deficiencies and weaknesses of the Special Investigation Unit for Crimes against Trade Unionists are a consequence of the State's lack of will, as the aforementioned reform provided the ideal opportunity to set up a prosecutor's office specialized in crimes against trade unionists.

- 392.** In addition, the complainant alleges that the reform is incompatible with freedom of association and disproportionately affects trade union organizations, their leaders and members, as it represents a return to a situation where public authorities lack genuine counterweight mechanisms to curb or impede arbitrary actions by them, and that some of the provisions under the reform are discriminatory towards trade union leaders.
- 393.** The complainant alleges that, by dismantling the Council of the Public Prosecutor's Office, the reforms of the Organic Law governing the Public Prosecutor's Office implemented by means of Decree No. 18-2016 have granted the Public Prosecutor wide-ranging decision-making powers, and explains that prior to its dismantling, the Council of the Public Prosecutor's Office acted as a collegiate body charged with: (i) upholding, amending or setting aside the directives issued by the Public Prosecutor when they were contested in accordance with the proceedings under the Organic Law and other directives established in accordance with the disciplinary rules and the rules on transfers and substitutions (articles 18, 68 and 72 of Decree No. 40-94); (ii) accepting or rejecting the Public Prosecutor's proposals on the operational and territorial structure of the Public Prosecutor's Office (article 18 of Decree No. 40-94); (iii) proposing district and divisional prosecutor's offices, prosecutors and assistant prosecutors in accordance with the career path of the Public Prosecutor's Office (article 18 of Decree No. 40-94); and (iv) hearing appeals against disciplinary action taken and sanctions issued against members of the Public Prosecutor's Office, impeding the Public Prosecutor's discretion concerning the aforementioned sanctions and career path (articles 53, 63 and 64 of Decree No. 40-94).
- 394.** Furthermore, the complainant indicates that before the reform was passed, if the Public Prosecutor's Office wanted access to sensitive information or to intervene in any way in the private sphere of a person, the institution had to seek the authorization of a judge competent to determine whether there was evidence indicating that such interference was reasonable. However, article 1 of Decree No. 18-2016, which reforms article 6 of the Organic Law governing the Public Prosecutor's Office, places an obligation on any public official and administrative authority of the State and its decentralized entities to cooperate with the Public Prosecutor's Office and provide the documents required by it, thereby eliminating any test of reasonableness, and emphasizes that a lack of cooperation may even result in criminal proceedings being brought by the Public Prosecutor's Office.
- 395.** Consequently, the complainant considers that the reform constitutes a serious deterioration in terms of human rights, as granting the Public Prosecutor wide-ranging decision-making powers and eliminating the test of reasonableness constitutes a risk for those organizations which, at a given time, may have interests that differ from those of the Government and the Public Prosecutor's Office, which have been characterized by repressive conduct against their workers' freedom of association. Furthermore, it considers that these conditions help the Public Prosecutor to monitor the activities of trade unions, the use of its resources and even the communications between its leaders and members, given that such interference does not require criminal investigation proceedings to be initiated, as the Public Prosecutor's Office functions as the monitoring and oversight body for its own actions.
- 396.** Furthermore, the complainant reports that article 52 of Decree No. 18-2016, which reforms article 77(b)(2) of the Organic Law governing the Public Prosecutor's Office, has provisions concerning the incompatibility between the functions of a member of the Public Prosecutor's Office and those of a trade union leader or adviser, thereby restricting in a discriminatory manner any person performing those duties from accessing the career path of the Public Prosecutor's Office. According to the complainant, the career path of the Public Prosecutor's Office comprises prosecutorial posts, and technician, administrator and operator posts; it also regulates access to employment and promotion prospects, and therefore in practice that provision implies that any trade union leader or adviser would lose their job or forfeit opportunities for promotion in the Public Prosecutor's Office.

397. The complainant indicates that, on account of the issuance of the decree, the Union of Workers of the Criminal Investigation Directorate of the Public Prosecutor's Office (SITRADICMP), an organization affiliated with the complainant organization, lodged a challenge before the Constitutional Court against Decree No. 18-2016 on the grounds of overall total unconstitutionality, which was dismissed on 10 January 2018. In relation to that decision, the complainant alleges that: (i) the judge that handed down the decision had a close relationship to the areas of Government; (ii) the Constitutional Court repeatedly declines to rule on the merits of cases in which there are clear violations of the Constitution; (iii) the higher courts repeatedly use a mechanism to undermine the legitimacy of trade union complaints, relying on the always subjective argument that the union failed to comply with the obligation to explain the unconstitutional flaws alleged; and (iv) in the said challenge of unconstitutionality, the trade union provided in a reasoned and substantiated manner the grounds on which the impugned provisions contravened the provisions of the Constitution and the principles of freedom of association and collective bargaining; nevertheless, the Court dismissed the trade union's demands on the grounds that it had not complied with the obligation to explain the unconstitutional flaws.
398. Lastly, the complainant alleges that the aforementioned decree revokes certain provisions of the collective agreement on working conditions in force, which was signed by the Public Prosecutor's Office and the Union of Workers of the Public Prosecutor's Office, thereby violating the right to free and voluntary collective bargaining. In this respect, the complainant states, firstly, that the decree removes the possibility for workers to appeal to the Council of the Public Prosecutor's Office against cases of dismissal, transfer and suspension imposed by the Public Prosecutor, that is, to an authority other than the one which imposed the sanction. It alleges that it is therefore contrary to article 12 of the collective agreement, which establishes that the rights currently recognized under the law or the collective agreement are minimum guarantees and cannot be diminished on any grounds, and to article 70 of the same agreement, which provides that decisions of the Public Prosecutor on disciplinary sanctions and transfers may be appealed before the Council of the Public Prosecutor's Office. Similarly, by establishing a penalty for very serious misconduct of an unpaid suspension from work of between twenty-one and ninety days, article 34(c) of Decree No. 18-2016 provides for a much harsher sanction than the maximum of fifteen days under the Organic Law governing the Public Prosecutor's Office; accordingly, because the reform is regressive, not only does it revoke article 12 of the aforementioned collective agreement, it also contravenes the Protection of Wages Convention, 1949 (No. 95). Additionally, the complainant alleges that, by establishing time limits for bringing disciplinary action of six months for minor misconduct, one year for serious misconduct and two years for very serious misconduct and a time limit of five years for imposing the disciplinary sanction, article 32 of the decree has clearly modified the time limits under articles 64 and 65 of the collective agreement on working conditions, which provided that the time limit for the employer's right to sanction a worker for misconduct was twenty days and restricted the time limit for imposing the disciplinary sanction to a maximum of eighteen months. Lastly, the complainant alleges that, by establishing that the imposition of a sanction for serious misconduct or for three instances of minor misconduct prevents the worker from being promoted and imposes a temporary restriction on opting for fellowships or other duties within the institution for as long as the note remains on the sanctioned worker's file, article 34 of the aforementioned decree revokes article 65 of the collective agreement on working conditions, under which the consequences of a disciplinary sanction may not exceed the sanction itself and consequently do not entail the loss of the rights accorded by the collective agreement.

B. The Government's reply

399. In its communications of 17 July 2017 and 15 November 2018, the Government communicates its observations on the present case. The Government indicates that the

Special Investigation Unit for Crimes against Trade Unionists, which is attached to the Human Rights Prosecution Service, was established in 2011 for the purposes of conducting specialized investigations into crimes against trade union organizations. Moreover, it indicates that, although the Unit initially comprised five persons, it currently comprises 19 persons, distributed over three agencies, one of which deals with violent deaths of trade unionists, while the others deal with disobedience offences. Additionally, the Government indicates that in 2015 the Public Prosecutor adopted General Directive No. 1-2015 on the investigation and effective prosecution of crimes committed against union leaders and members, workers and other defenders of labour and trade union rights, with a view to providing the staff with training on general guidelines and criteria for criminal prosecutions of crimes committed against trade unionists.

- 400.** Furthermore, the Government states that the Committee should decline to examine the complaint because: (i) the complaint does not demonstrate the existence of restrictions on the right to organize, alleged interference in the functioning of the organization or the prohibition of or excessive restrictions on the right to strike; (ii) the Committee has previously considered that it can examine allegations concerning economic rationalization programmes and restructuring processes, whether or not they imply redundancies or the transfer of enterprises or services from the public to the private sector, only in so far as they might have given rise to acts of discrimination or interference against trade unions, which does not apply in this case; (iii) the Committee is not competent to examine allegations concerning general working conditions, social security or layoffs in general; (iv) the aforementioned reform of the Organic Law governing the Public Prosecutor's Office took into account the provisions of the Constitution of Guatemala, the principles of labour law, the rules and regulations in force in the institution and the collective agreement on working conditions signed by the Public Prosecutor's Office and the Union of Workers of the Public Prosecutor's Office; and (v) in the present case, the aforementioned Decree No. 18-2016 concerns the institutional strengthening of the Public Prosecutor's Office and is wholly unrelated to trade union matters, as there is no causal nexus to determine that acts undermining freedom of association and the right to organize were committed.
- 401.** In its communication of 1 May 2019, the Government transmits the information from the Public Prosecutor's Office of Guatemala. In relation to the purported failure to assign sufficient resources and staff for the proper functioning of the Special Investigation Unit for Crimes against Trade Unionists, the Government indicates that, since 2011, the year in which the specialized unit was established, there has been a five-fold increase in the budget for strengthening human resources, and furniture and equipment for the Unit, which increased from 868,216.96 quetzals in 2011 to 1,929,491.10 quetzals in 2014, 2,101,065.42 quetzals in 2016 and 4,178,537.85 quetzals in 2017 (equivalent to a total of US\$ 545,821.51 in 2017).
- 402.** In relation to the reform of the Organic Law governing the Public Prosecutor's Office, the Government states that: (i) the reform brings significant changes in various institutional areas with a view to strengthening the Public Prosecutor's Office and increasing the level of professionalism of human resources; (ii) it is particularly important to unify the rules and regulations of the disciplinary regime, which were disseminated in various provisions, including in the collective agreements that have been signed by the Public Prosecutor's Office and its trade union since the establishment of the institution; (iii) pursuant to article 60 of the Organic Law governing the Public Prosecutor's Office, the disciplinary system of the professional careers of the institution is governed in accordance with the principles of legality, *non bis in idem*, independence of disciplinary proceedings, the right of defence and proportionality; (iv) the reform allowed three different disciplinary systems to be established, governing misconduct committed by prosecutorial staff and administrative, technical and support staff; for prosecutorial staff, the Disciplinary Board is the competent body to impose sanctions for misconduct; (v) the reform allowed the introduction of appropriate grounds for the Public Prosecutor's removal from office, an aspect which had

not been properly regulated and had given rise to a legal vacuum; and (vi) concerning the purported concentration of powers in the Public Prosecutor's Office, its functions are conducted in compliance with the powers vested in it under the Constitution, laws, including the Organic Law governing the Public Prosecutor's Office, and international conventions and treaties.

403. As to the purported incompatibility brought about by article 52 of Decree No. 18-2016, the Government makes reference to Case No. 4134-2016 of the Constitutional Court, which dismissed the challenge on the grounds of total unconstitutionality against Decree No. 18-2016 brought by SITRADICMP. The Government indicates that in its decision, the Constitutional Court found that the plaintiffs "merely indicated that Decree No. 18-2016 of the Congress of the Republic of Guatemala, which contains the reforms to the Organic Law governing the Public Prosecutor's Office, Decree No. 40-94 of that body, violated articles 1, 2, 3, 4, 5, 12, 17, 22, 24, 30, 44, 46, 102, 103, 106, 113, 140, 141, 152, 153, 154, 175, 202, 211 and 251 of the Political Constitution of the Republic of Guatemala" and that "the Constitutional Court cannot subrogate the will of the plaintiff". Consequently, the Government considers that: (i) it was the omission on the part of the plaintiffs that resulted in the Constitutional Court not examining the merits of the arguments, as merely citing the constitutional provisions is no substitute for setting out the reasoning which would enable the alleged constitutional violation to be determined; and (ii) by omitting to set out a legal reasoning comparing the constitutional provisions that were considered to have been violated and the provisions of ordinary law being challenged, the plaintiffs' arguments were considered by the Court to be insufficient and lacking a reasoned legal foundation, as they merely described and set out subjectively what in their view was detrimental to their interests by raising a series of situations, some of which real, others hypothetical, which apparently provided the basis for the proclaimed flaws.

C. The Committee's conclusions

404. *The Committee observes that in the present case the complainant alleges that various aspects of Decree No. 18-2016, which modified the Organic Law governing the Public Prosecutor's Office, violate the principles of freedom of association and collective bargaining and the corresponding ILO Conventions ratified by Guatemala. The Committee notes that the complainant's allegations concern in particular: (i) the failure to assign sufficient resources and staff to the Special Investigation Unit for Crimes against Trade Unionists; (ii) the dismantling of the Council of the Public Prosecutor's Office and the corresponding broadening of the powers of the Public Prosecutor for disciplinary matters; (iii) the broadening of the powers of the Public Prosecutor's Office, which no longer has to seek the authorization of a judge before conducting certain investigations; (iv) the creation of an incompatibility between the functions of a member of the Public Prosecutor's Office and those of a trade union leader or adviser; and (v) non-compliance with various clauses of the collective agreement on working conditions in the institution.*
405. *The Committee notes that the Government considers that the complaint presented by the complainant should not be examined, as the aforementioned decree, which was adopted with a view to strengthening the institution of the Public Prosecutor's Office, is wholly unrelated to trade union matters and does not contain violations of the right to organize or collective bargaining, as it was drafted in accordance with the national and international legislation in force and with the collective agreement on working conditions signed by the Public Prosecutor's Office and the Union of the Public Prosecutor's Office. It also notes the Government's indications that the challenge on the grounds of overall total unconstitutionality of Decree No. 18-2016 lodged by a union affiliated to the complainant federation before the Constitutional Court was dismissed because the Court considered the plaintiffs' proposals to be insufficient and lacking legal reasoning in support of their*

argument, as the plaintiffs had merely described and set out subjectively what in their view was detrimental to their interests.

- 406.** *As to the Government's unwillingness to assign sufficient resources and staff to the Special Investigation Unit for Crimes against Trade Unionists, the Committee recalls that this matter is being examined as part of Case No. 2609 and that it has already made recommendations in this respect [see in particular, 387th Report, November 2018, paragraph 414]; consequently, the Committee will pursue its examination of this matter as part of that case.*
- 407.** *As to the dismantling of the Council of the Public Prosecutor's Office and the corresponding broadening of the powers of the Public Prosecutor concerning disciplinary matters, the Committee notes the complainant's allegations indicating that: (i) the Council of the Public Prosecutor's Office was the body charged with upholding, amending or setting aside the directives issued by the Public Prosecutor on disciplinary matters and hearing appeals against disciplinary action taken and sanctions issued against members of the Public Prosecutor's Office; (ii) by removing the Council from the organizational structure, the reforms of the Organic Law governing the Public Prosecutor's Office eliminated any genuine counterweight mechanisms to curb or impede arbitrary actions by the Public Prosecutor in disciplinary matters; and (iii) the reform particularly affected trade unions and their leaders and members, as the possibility of challenging disciplinary sanctions before a separate authority was abolished. In turn, the Government considers that: (i) the complainant's allegations do not establish a causal nexus to determine that acts undermining freedom of association or the right to organize were committed; (ii) the reform enabled the rules and regulations of the disciplinary regime that had been disseminated in various regulatory sources, including the institution's collective agreements, to be unified; (iii) three different disciplinary systems were established; and (iv) pursuant to article 60 of the Organic Law governing the Public Prosecutor's Office, the disciplinary system of the professional career path of the Public Prosecutor's Office is governed in accordance with the principles of legality, non bis in idem, independence of disciplinary proceedings, the right of defence and proportionality. The Committee observes that the complainant's allegations merely indicate that the broader powers of the Public Prosecutor might constitute a potential risk for trade union organizations, but do not contain sufficient specific allegations to demonstrate the anti-union nature and effects of the said provisions. Consequently, the Committee will not pursue its examination of this allegation.*
- 408.** *As to the purported broadening of the powers of the Public Prosecutor's Office, which no longer has to seek the authorization of a judge before conducting certain investigations, the Committee notes that according to the complainant: (i) prior to the reform, if the Public Prosecutor's Office wished to intervene in any way in the private sphere of a person, it had to seek the authorization of a judge competent to determine whether there was evidence indicating that such interference was reasonable; (ii) article 1 of Decree No. 18-2016 eliminates any test of rationality and places an obligation on any public official and administrative authority of the State and its decentralized entities to cooperate with the Public Prosecutor's Office and provide the documents required by it; and (iii) by eliminating any test of rationality, the Public Prosecutor's Office or the Government can easily interfere in the management of trade unions and the private spheres of its members, and the complainant emphasizes that those institutions have been characterized by repressive conduct against their workers' freedom of association. The Committee also notes the observations of the Government indicating that: (i) Decree No. 18-2016 concerns the institutional strengthening of the Public Prosecutor's Office and is wholly unrelated to trade union matters; and (ii) the functions of the Public Prosecutor's Office are conducted in compliance with the powers vested in it under the Constitution, laws, including the Organic Law governing the Public Prosecutor's Office, and international conventions and treaties. Underscoring the fact that the Committee is not competent to rule on the division of*

competences between the Public Prosecutor's Office and the courts and that the complainant does not provide specific evidence to demonstrate the anti-union nature or effects of the broadening of the powers of the Public Prosecutor's Office, the Committee will not pursue its examination of this allegation.

409. As to the allegedly anti-union nature of article 52 of Decree No. 18-2016, the Committee observes that it amends article 77 of the Organic Law governing the Public Prosecutor's Office in the following manner:

Article 77. Incapacity or incompatibility.

...

- (b) *The following shall be incompatible with the functions of a member of the Public Prosecutor's Office:*

- (1) *Holding any office elected by popular vote or standing for election to such office.*
- (2) *Holding any other remunerated public or private employment or functions, or any other employment, leadership or advisory role in political institutions, trade unions or entities which receive, administer or use public resources or property of the State or which form part of the State administration outside the Public Prosecutor's Office, or other entities with political aims, or being a minister of any religion or faith*

*In this respect, the Committee notes that, according to the complainant's allegations: (i) this article provides as grounds for incompatibility with the functions of a member of the Public Prosecutor's Office the holding of a leadership or advisory role in a trade union, so that in practice, this would entail the loss of employment or forfeiting opportunities for promotion within the institution for those persons contemplated by the article; (ii) a trade union affiliated with the complainant brought a challenge on the grounds of overall total unconstitutionality against Decree No. 18-2016 before the Constitutional Court, which was dismissed on 10 January 2018; and (iii) the judge responsible for ruling on the case dismissed it on the grounds of purported flaws in its form, without ruling on the merits. The Committee observes that although the Government refers to the decision of the Constitutional Court dismissing the challenge of total unconstitutionality of Decree No. 18-2016, the Court did not rule on the alleged anti-union nature of article 52 of the decree. Furthermore, the Committee observes that it is apparent from the decision of 10 January 2018 that the Constitutional Court made no finding on the merits, and that consequently it did not examine the potential impact of the decree on freedom of association. The Committee notes that article 52 of Decree No. 18-2016 explicitly establishes an incompatibility between the functions of "a member of the Public Prosecutor's Office" and "leadership or advisory roles in ... trade unions ... outside the Public Prosecutor's Office" – an incompatibility that was not contemplated in the previous legislation. While observing that the exact personal and material scope of the aforementioned incompatibility is not precisely defined by article 52 of Decree No. 18-2016 and that the Government has not provided clarifications in that regard, the Committee recalls that no person shall be prejudiced in employment by reason of trade union membership or legitimate trade union activities, whether past or present [see **Compilation**, op. cit., para. 1074]. In the light of the foregoing, and highlighting the existence of the National Tripartite Committee on Labor Relations and Freedom of Association created in 2018, the Committee requests the Government to submit to tripartite debate the exact scope of article 77 of the Organic Law governing the Public Prosecutor's Office as amended by article 52 of Decree No. 18-2016 in order to guarantee its full conformity with the principles of freedom of association, ensuring, in particular, the right of members of the Public Prosecutor's Office to organize as well as to participate in trade union activities, both through their primary organization and the federation or confederation to which their union may be affiliated.*

410. *Lastly, as to the allegations concerning the purported revocation by Decree No. 18-2016 of certain provisions of the collective agreement on working conditions that is in force, the Committee notes that the complainant states that safeguards established by the collective agreement in relation to the disciplinary regime are affected, particularly with regard to: (i) the time limits for initiating disciplinary action and imposing sanctions; and (ii) the effects of the sanctions on workers' acquired rights. The Government indicates that the reform enabled the provisions concerning the disciplinary regime that had been disseminated in various regulatory sources, including in the collective agreements on working conditions signed by the institution, to be unified and that Decree No. 18-2016 took account of the content of those collective agreements. The Committee also observes that in its reply, the Government does not refer to the detailed allegations of violations of specific clauses of the collective agreement that are contained in the complaint. Recalling that agreements should be binding on both parties and that the public authorities should promote free collective bargaining and not prevent the application of freely concluded collective agreements, particularly when these authorities are acting as employers or have assumed responsibility for the application of agreements by countersigning them [see **Compilation**, op. cit., paras 1334 and 1480], the Committee trusts that, in the context of the application of Decree No. 18-2016, the Public Prosecutor's Office will comply in law and in practice with the institution's collective agreement.*

The Committee's recommendations

411. *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a) highlighting the existence of the National Tripartite Committee on Labor Relations and Freedom of Association created in 2018, the Committee requests the Government to submit to tripartite debate the exact scope of article 77 of the Organic Law governing the Public Prosecutor's Office as amended by article 52 of Decree No. 18-2016 in order to guarantee its full conformity with the principles of freedom of association, ensuring, in particular, the right of members of the Public Prosecutor's Office to organize as well as to participate in trade union activities, both through their primary organization and the federation or confederation to which their union may be affiliated.*
- (b) The Committee trusts that, in the context of the application of Decree No. 18-2016, the Public Prosecutor's Office will comply in law and in practice with the institution's collective agreement.*

CASE NO. 3249

INTERIM REPORT

**Complaint against the Government of Haiti
presented by
the Confederation of Public and Private Sector Workers (CTSP)**

Allegations: The complainant organization alleges that union officials working in the postal sector have been automatically laid off, that they have not been reinstated in their posts and that their union has been dissolved

- 412.** The Committee last examined the complaint from the Confederation of Public and Private Sector Workers (CTSP) at its June 2018 meeting, when it presented an interim report to the Governing Body [see 386th Report, approved by the Governing Body at its 333rd Session (June 2018), paras 341–352].
- 413.** In the absence of a reply from the Government, the Committee has been obliged to postpone its examination of this case twice. At its March 2019 meeting, the Committee expressed regret at the Government’s persistent non-cooperation and launched an urgent appeal to the Government indicating that a report would be presented on the substance of the matter at its next meeting, even if the information or observations requested had not been received on time. In a communication dated 7 May 2019, the Government explains that this delay is due to the various crises that the country has experienced since the complaint was lodged in 2016 and merely recalls the applicable legislation on the protection of the right to organise.
- 414.** Haiti has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

- 415.** During its previous examination of the case, in June 2018, the Committee made the following recommendations [see 386th Report, para. 352]:
- (a) The Committee deeply regrets that the Government has not replied to the allegations, even though it has been asked to do so on several occasions, including through an urgent appeal, and requests it to reply as soon as possible.
 - (b) In the light of the scant and contradictory information brought to its attention, the Committee calls on the Government and on the complainant organization to provide precise information concerning the establishment of the SPH (date of establishment, registration procedure, statutes ...) and the conditions of its alleged dissolution.
 - (c) The Committee calls on the Government to expedite an independent inquiry into the allegations concerning the automatic laying off of the union representatives concerned, namely Messrs Daniel Dantes, Fely Desire, Jean Estima Fils, Petit-Maitre Jean-Jacques, Ronald Joseph, Harold Colson Lazarre, Amos Musac and Guito Phadael, and to provide information on their present situation. If it is found that acts of anti-union discrimination have been committed by the Directorate General of the Post Office, the Committee calls on the Government to take the necessary measures of redress, including ensuring that the workers concerned are reinstated without loss of pay. The Committee requests the Government to keep it informed of all measures taken in this regard and the results of those measures, and to indicate whether any court rulings have been issued in these cases.

- (d) In light of the issues raised in this complaint, the Committee invites the Government to avail itself of the technical assistance of the Office.

B. The Committee's conclusions

- 416.** *The Committee deplores that, despite the time which has elapsed since the submission of the complaint, the Government has not provided the requested observations and information in response to the allegations made by the complainant organization and the Committee's recommendations, even though it has been asked to do so on several occasions, including through urgent appeals. While noting the crisis situation referred to by the government in its communication of 7 May 2019, the Committee firmly urges the Government to be more cooperative in the future.*
- 417.** *Under these circumstances and in accordance with the applicable procedural rule [see 127th Report, approved by the Governing Body at its 184th Session (1972)], the Committee is obliged to present a report on the substance of the case without being able to take account of the information which it had hoped to receive from the Government.*
- 418.** *The Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of alleged violations of freedom of association is to ensure respect for trade union rights in law and in fact. The Committee is confident that, while this procedure protects governments against unreasonable accusations, they must recognize the importance of formulating, for objective examination, detailed replies concerning allegations brought against them [see First Report, 1952, para. 31]. The Committee calls on the Government to be more cooperative in the future.*
- 419.** *The Committee recalls that the allegations in this case concern the automatic laying off of union officials working in the postal sector in 2012, their non-reinstatement in their posts and the dissolution of their well-established union. The union representatives concerned are Mr Daniel Dantes, Mr Fely Desire, Mr Jean Estima Fils, Mr Petit-Maitre Jean-Jacques, Mr Ronald Joseph, Mr Harold Colson Lazarre, Mr Amos Musac and Mr Guito Phadael.*
- 420.** *The Committee deeply regrets that neither the Government nor the complainant organization has provided the requested information concerning the establishment of the Haiti Postal Workers' Union (SPH) (date of establishment, registration procedure, statutes and so on) and the circumstances surrounding its alleged dissolution. It also deeply regrets not receiving any information from the Government on the automatic laying off of the above-mentioned union representatives, the latter having confined itself to recalling the legislation on the protection of the right to organise. Such actions against union officials, reinforced by the Government's silence over the steps taken to ensure their protection, such as by conducting an independent inquiry as quickly as possible, would appear to corroborate the more general allegations of non-observance of union rights in the country.*
- 421.** *Under these circumstances, the Committee finds itself obliged to refer the Government to its conclusions from its last examination of this case [see 386th Report, paras 341–352] and to recall all of its previous recommendations.*

The Committee's recommendations

422. *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a) *The Committee deplores that the Government has not replied to the allegations, even though it has been asked to do so on several occasions, including through urgent appeals, and urges it to reply as soon as possible.***
- (b) *In the light of the scant and contradictory information brought to its attention, the Committee urges the Government and the complainant organization to provide precise information concerning the establishment of the Haiti Postal Workers' Union (SPH) (date of establishment, registration procedure, statutes and so on) and the circumstances surrounding its alleged dissolution.***
- (c) *The Committee urges the Government to expedite an independent inquiry into the allegations concerning the automatic laying off of the union representatives concerned, namely Mr Daniel Dantes, Mr Fely Desire, Mr Jean Estima Fils, Mr Petit-Maitre Jean-Jacques, Mr Ronald Joseph, Mr Harold Colson Lazarre, Mr Amos Musac and Mr Guito Phadael, and to provide information on their present situation. If it is found that acts of anti-union discrimination have been committed by the Directorate-General of the Post Office, the Committee requests the Government to take the necessary remedial measures, including to ensure the reinstatement of the workers concerned without loss of pay. The Committee requests the Government to keep it informed of any measures taken in this regard and the results of those measures, and to indicate whether any court rulings have been issued in these cases.***
- (d) *In the light of the issues raised in this complaint, the Committee reminds the Government that it may avail itself of the technical assistance of the Office.***

CASE NO. 2508

INTERIM REPORT

Complaint against the Government of the Islamic Republic of Iran presented by

- **the International Confederation of Free Trade Unions (ICFTU)**
(the ICFTU was the initial complainant in 2006 before becoming part of the International Trade Union Confederation (ITUC); and
- **the International Transport Workers' Federation (ITF)**

Allegations: Acts of repression against the local trade union at a city bus company, as well as the arrest and detention of large numbers of trade unionists

- 423.** The Committee last examined this case at its October 2018 meeting, when it presented an interim report to the Governing Body [see 387th Report, approved by the Governing Body at its 334th Session, paras 482–511].
- 424.** The International Transport Workers' Federation (ITF) provided new allegations in a communication dated 12 October 2018.
- 425.** The Government sent its observations in a communication dated 3 February and 20 May 2019.
- 426.** The Islamic Republic of Iran has not ratified either the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

- 427.** At its October 2018 meeting, the Committee made the following recommendations [see 387th Report, para. 511]:
- (a) The Committee firmly hopes that the multiple legislative revision processes currently under way will soon bear fruit so as to endow the Islamic Republic of Iran with a legal framework fully compatible with freedom of association principles, in particular by allowing for trade union pluralism, and requests the Government to provide information on the progress made and to send a copy of the latest drafts.
 - (b) The Committee once again urges the Government to take all the measures necessary to ensure that the SVATH may function de facto pending legislative reform and that it can recruit members, represent them and organize its activities without hindrance.
 - (c) Noting with interest that the by-law on the Management and Organization of Trade Union Demands recognizes the right of workers to organize protests and demonstrations as a legitimate trade union activity and sets a framework for the exercise of this right, the Committee trusts that the technical cooperation for training the disciplinary forces previously requested by the Government will take place in the near future and that instructions will be developed to ensure that the city and province security councils and the right enforcement forces exercise their powers in accordance with the principles recalled in the Committee's conclusions.
 - (d) Noting with interest the Government's indication that it has undertaken consultations with competent judicial authorities with a view to following up and settling the judicial status

of the trade unionists on whose arrest and sentencing the Committee had expressed concern and that these efforts will continue until all cases are definitively settled, the Committee urges the Government to continue its efforts in order to ensure that peaceful trade union activists are not sentenced to prison on vague charges of disturbing public order, acting against national security and propaganda against the State. In particular, the Committee urges the Government to ensure that Mr Razavi, Madadi and Mr Nejati do not return to prison in enforcement of sentences condemning peaceful trade union activities and to keep it informed of the developments in this regard. The Committee further requests the Government to provide information with regard to the latest developments in the judicial proceedings against Mr Jafar Azimzadeh, Mr Shapour Ehsanirad, and Mr Jamil Mohammadi and to submit copies of any judgments issued.

- (e) Deeply regretting that the Government has failed to honour its obligation to ensure that an independent investigation is promptly conducted into the allegations of workplace harassment during the period of re-establishment of the SVATH and the allegations of ill-treatment of Messrs Madadi and Shahabi while in detention, the Committee firmly hopes that in the future, investigations into allegations of violation of the right to freedom of association will be seriously conducted so that this right is effectively protected and guaranteed.
- (f) In view of the number of trade unionists in detention in the Islamic Republic of Iran, the Committee urges the Government to take all the necessary measures to ensure that the right to health of the detained trade unionists is duly respected in the future, and that they are given access to medical care and medication if need be.
- (g) The Committee requests the Government to respond without delay to the latest allegations of the ITF concerning the arrest and detention of over 200 truck drivers who had participated in a strike action in September 2018, and the request of death sentence against 17 strikers in a Qazvin province court.
- (h) The Committee draws the Governing Body's attention to the extremely serious and urgent nature of this case.

B. The Complainant's new allegations

428. In its communication dated 12 October 2018, the International Transport Workers' Federation (ITF) provided new allegations stating that, following industrial action taken by truckers in September in Qazvin province as a last resort in the struggle to feed their families, the Government arrested 150 truckers and then took another 200 into custody. According to the ITF, on 8 August 2018, the state-run IRNA news agency reported that a court in the province had requested possible death sentences for 17 of the truckers. The ITF requests the Committee to call upon the Government to ensure the unconditional withdrawal of charges against the detained truckers, to assure their physical safety, to engage in meaningful dialogue to address the workers' immediate concerns and to explore the changes needed to allow the creation of a democratic and independent trade union for truckers.

C. The Government's reply

429. In its communication dated 3 February 2019, the Government reiterates that in general, it has always tried to deal with violations that take place in the workers' community with the utmost forbearance possible, and that in certain cases even after the finalization of judicial proceedings it has kept trying to obtain pardon or mitigation of the punishment. It further adds that in the few cases where the accused had abused their status as workers to commit criminal acts such as terrorist activity, encouraging armed and subversive actions against the state, creating ethnic and religious hatred and disturbing national security, the charges have been dealt with in accordance with the law. The Government further indicates that industrial actions were managed on the basis of rules of non-violent management of gatherings and protests and misbehaviour and violent treatment of demonstrators were never authorized.

430. With regard to the legislative revision processes currently under way, the Government reiterates that it has withdrawn the Bill on the Amendment of the Labour Law from Parliament following the requests of workers' and employers' organizations to that effect. It further indicates that the new drafts of the proposed by-laws subject to sections 131 and 136 of the Labour Law which had been presented to the Council of Ministers for study and approval were returned to the High Labour Council for further review, due to objections raised by some confederations of trade unions. Finally, the reform of the Act on the Establishment of High Labour Council is on the agenda of the Social Committee of the Islamic Parliament of Iran and the Government's viewpoints and suggestions have been transmitted to that committee.
431. With regard to the Committee's recommendation urging the Government to take all the necessary measures to ensure that the Syndicate of Workers of Tehran and Suburbs Bus Company (SVATH) may function de facto pending legislative reform and that it can recruit members, represent them and organize its activities without hindrance, the Government reiterates its commitment to the right of the workers' organizations to establish themselves and organize their activities within the framework of the labour law of the Islamic Republic of Iran. The Government refers to Article 3 of Convention No. 87 which provides that workers' and employers' organizations shall have the right to elect their representatives in full freedom and adds that regulations related to all workers' organizations under the labour law of the Islamic Republic of Iran provide that the general meeting of all members of an organization has the responsibility of electing the organization's officials and articles 1 and 3 of the Act on Islamic Labour Councils (1985) and the relevant by-laws underscore the importance of holding the general meeting of employees and the election of workers' representatives. It further indicates that through participation in general meetings, more than 4,000 employees of the Tehran and Suburbs Bus Company have elected their representatives for an extendable period of two years. Therefore, the Government indicates, the company currently has its legal workers' organization appointed by the majority of its personnel. The Government further adds that seven Islamic labour councils have been established and registered in various sections of the company in compliance with national regulations and right now their elected members are active in defending the interests of the workers. The Government finally indicates that the mentioned persons face no prohibition for membership in the existing organizations or acquiring the vote of a majority of workers and representing them, provided that they are qualified and work at the company.
432. With regard to the right of workers to organize protests and demonstrations and in reply to the Committee's recommendation trusting that technical cooperation for training the disciplinary forces will take place in the near future and that instructions will be developed to ensure that the city and province security councils and the law enforcement forces exercise their powers in accordance with the principles of freedom of association, the Government indicates that the activity of workers' organizations in terms of providing their members with knowledge on their rights and obligations and the use of legal tools for announcing union demands is insufficient due to inadequate training and ILO technical assistance could be effective and useful for these organizations. It reiterates that workers' organizations enjoy the right to freedom of association including the right to peaceful gatherings within the framework of the country's applicable laws and regulations and further adds that it has communicated the recommendations of the Committee on Freedom of Association to the Human Rights Headquarters of the Judiciary and the concerned authorities.
433. The Government provides the following information with regard to the developments in the judicial proceedings concerning trade union activists:
- Mr Ebrahim Madadi and Mr Davoud Razavi are free and out of prison.

- Mr Ali Nejati was sentenced to four months and 15 days of imprisonment on charges of propaganda against the State and membership of hostile groups and relationship with alien countries, however he has not yet presented himself for judgment enforcement.
- Mr Jafar Azimzadeh was sentenced to imprisonment on charges of assembly and collusion with the intent to commit crimes against national security and propaganda against the State. He was given five days of furlough on 5 July 2016 which was further extended to six days. He did not return to prison on 11 July and was still absent at the time of the Government communication.
- Mr Jamil Mohammadi was sentenced to two years imprisonment on a number of charges including assembly and collusion with the intent to act against national security. He was at large at the time of the Government communication.
- Mr Shapour Ehsanirad was free at the time of the Government communication.

434. The Government further indicates that under article 58 of the Islamic Penal Code, convicts sentenced to discretionary punishments are entitled to parole and those sentenced to definite punishments may seek mitigation of their punishment through the pardon committee, and the Government, with the collaboration of the Human Rights Headquarters of the Judiciary, makes its best effort for the success of such applications.

435. With regard to the Committee's recommendation concerning investigation into allegations of ill-treatment, the Government rejects the allegations of ill-treatment of Mr Shahabi and Mr Madadi while in detention, reiterates its previous indications concerning the domestic mechanisms available to victims [see 382nd Report, para. 408], and requests the Committee to provide any information and documents it may have regarding the allegations. With regard to the right to health of the detained trade unionists and their access to medical care and medication the Government indicates that the Executive By-Law of Prisons and Security and Corrective Measures Organization provides for the detainees' access to food and health, medical care and medication, employment, vocational training and rehabilitation programmes. It further adds that the prisoners have easy access to family visits including private meetings with their spouses, they can also make telephone calls and use prison clinic facilities as well as specialized services of hospitals and medical centres outside the prison.

436. With regard to the ITF allegation of the arrest and detention of over 200 truck drivers who had participated in a strike action in September 2018 and the request of death sentence against 17 strikers in a Qazvin province court, the Government transmits the reply of the competent authorities indicating that 17 persons were identified and arrested in Qazvin at the time of the commotion under the guise of truckers' strike. Among them, 15 persons were charged with disturbing public order and sentenced to discretionary punishment – imprisonment – in accordance with the law. Two other persons, whose criminal behaviour had initially created fear and intimidation on public roads and who had reportedly carried and used cold weapons, were arraigned and interrogated as bandits. The case concerning them is currently under investigation at the inspection bench of the Qazvin public prosecutor's office. The Government further adds that, according to the information received from the judiciary, some of the persons arrested were not truck drivers but, under the pretext of supporting truck owners, created public nuisance and disturbed public order. They were thus arrested and prosecuted under charges of disturbing public order, destroying public property, insults and abuse. A detention order for trial on the above charges was issued for these 17 persons and unenforceable judgement was issued. No death sentence has been issued for anyone. The Government indicates that the case is currently at the appeal stage and that pending appeal, these 17 people are free and are not under arrest.

D. The Committee's conclusions

437. *The Committee recalls that this case, lodged in July 2006, concerns acts of repression against the Syndicate of Workers of Tehran and Suburbs Bus Company (SVATH), as well as the arrest, detention and condemnation of large numbers of other trade union members and officials, and the inadequate legislative framework for the protection of freedom of association.*
438. *The Committee notes with regret that the information submitted by the Government on the legislative reform process does not indicate any concrete progress in this regard. It therefore once again recalls its long-standing request that the Government bring Iranian legislation into line with the freedom of association principles, in particular by allowing trade union pluralism [see 360th Report, para. 807(c)] and urges the Government to take all the measures necessary to expedite the legislative reform so as to bring the current legal framework into conformity with freedom of association principles. The Committee requests the Government to provide information on the progress made and to send a copy of the latest drafts.*
439. *The Committee notes the Government's indications with regard to the legal workers' organization present at Tehran and Suburbs Bus Company. The Committee observes that the information provided by the Government does not clarify whether a new union has been established in the company or whether the workers have merely elected a number of representatives or shop stewards for a period of two years. It notes however the Government's clear indication that SVATH members face no prohibition for membership in existing organizations – which the Committee understands as a reference to the Islamic labour councils or the organization recently created through elected workers' representatives. While the Government refers to Article 3 of Convention No. 87, the Committee would draw its attention to the fundamental principle expressed in Article 2 of the same instrument, providing that “Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation”. The Committee recalls that the right of workers to establish organizations of their own choosing implies, in particular, the effective possibility to create – if the workers so choose – more than one workers' organization per enterprise. [See **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 479]. The Committee considers that even if the majority of workers at the company have created a new organization, this should not have any impact on the continued existence and free functioning of the SVATH. Ultimately, it is the workers who should choose the union which, in their opinion, will best promote their occupational interests without interference by the authorities. In view of the above, the Committee urges the Government to ensure that the workers at the company are free to choose the union they wish to join and that the SVATH may recruit members, represent them and organize its activities without interference from the authorities or the employer, and regardless of the eventual existence of another workers' grouping at the company. The Committee requests the Government to keep it informed of the measures taken and the developments in this regard.*
440. *The Committee notes the Government's indications with regard to the status of Mr Madadi, Mr Razavai, Mr Nejati, Mr Azimzadeh, Mr Mohammadi and Mr Ehasnirad. It notes that with regard to Mr Madadi, Mr Razavi and Mr Ehasnirad, the Government only indicates that they are free, without providing information on the outcome of the proceedings that were engaged against them [see 387th Report, para. 506], or indicating whether the charges against them have been lifted or whether the cases are still open. While welcoming the information that they have not been returned to prison, the Committee firmly expects that none of these unionists is prosecuted for peaceful trade union activities and that no restriction is imposed on the exercise of their right to freedom of association. It requests the*

Government to provide detailed information on the outcome of the proceedings against them and send copies of the judgments issued.

- 441.** *With regard to the cases of Mr Nejati, Mr Azimzadeh and Mr Mohammadi, the Committee notes with deep concern that unionists are once again sentenced to imprisonment on charges such as propaganda against the State and assembly and collusion with the intent to commit crimes against national security. The Government does not provide any indication concerning the specific actions that were qualified to fall under these charges. However, the Committee recalls that the complainants' allegations with regard to the case of Mr Azimzadeh contained a detailed reference to the actions attributed to him in the judgment, and those actions included the establishment of the Free Union of Workers of Iran; collecting 40,000 workers' signatures on the minimum wage petition and leading rallies outside the National Assembly and the Ministry of Labour; meeting other independent workers' organizations, leading protests against anti-labour amendment to the Labour Law and giving and posting interviews on the website of the Free Union of Workers of Iran and a number of international news media [see 380th Report, para. 644]. The Committee considers that the right to establish a trade union is the most fundamental aspect of freedom of association and collection of signatures for a petition containing requests related to minimum wage would clearly constitute an activity aimed at protecting the occupational interests of workers. It recalls that the right to express opinions through the press or otherwise is an essential aspect of trade union rights and the full exercise of trade union rights calls for a free flow of information, opinions and ideas within the limits of propriety and non-violence and that workers should enjoy the right to peaceful demonstration to defend their occupational interests [see **Compilation**, op. cit., paras 241 and 208]. The Committee also notes that the Government emphasizes that in the Islamic Republic of Iran, workers' organizations enjoy the right to peaceful gatherings. The Committee considers that all the actions referred to above constitute legitimate trade union activities and no one should be prosecuted, sentenced or sanctioned for their exercising. It therefore once again urges the Government to continue its efforts in communication with competent judicial authorities in order to ensure that peaceful and legitimate union activities such as those mentioned above do not entail criminal charges and sanctions for trade unionists and any such charges are immediately lifted. In particular, it urges the Government to ensure that Mr Azimzadeh, Mr Mohammadi and Mr Nejati are not imprisoned for exercising their right to freedom of association and to keep it informed of developments in this regard.*
- 442.** *The Committee notes the latest information provided by the Government with regard to the alleged request for a death sentence against 17 participants in the truck drivers' strike in September 2018, according to which, detention order for trial on charges of disturbing public order and destroying public property was issued and an unenforceable judgement was pronounced. No one has been sentenced to death. The Government indicates that the case is currently at the appeal stage and that pending appeal, these 17 people are free and are not under arrest.*
- 443.** *The Committee notes that the Government does not reply to the allegation of the arrest of over 200 strikers and requests it to provide information in this regard. The Committee recalls that while it has always considered that the principles of freedom of association do not protect abuses consisting of criminal acts while exercising the right to strike, no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike [see **Compilation**, op. cit., paras 965 and 971]. The Committee expects that fair trial guarantees will be assured, including the principle of presumption of innocence and the right of the accused to effective assistance by defence counsel at all stages of the proceedings, including investigation. The Committee requests the Government to take all the measures necessary to ensure that no one is imprisoned merely for having organized or having peacefully participated in the truck drivers' strike in September 2018. The Committee further requests the Government to keep it informed of the*

outcome of the pending appeal proceedings in the case of 17 persons, and to send a copy of the judgments once they are issued.

The Committee's recommendations

444. *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a) *The Committee once again urges the Government to take all the measures necessary, in full consultation with representatives of workers and employers, to expedite the legislative reform so as to bring the current legal framework into conformity with freedom of association principles. It requests the Government to provide information on the progress made in this regard and to send a copy of the latest drafts.*
- (b) *The Committee urges the Government to ensure that the workers at the Tehran and Suburb Bus Company are free to choose the union they wish to join and that the SVATH may recruit members, represent them and organize its activities without interference from the authorities or the employer, and regardless of the eventual existence of another workers' grouping at the company. The Committee requests the Government to keep it informed of the developments in this regard.*
- (c) *The Committee once again urges the Government to continue its efforts in communication with competent judicial authorities in order to ensure that peaceful and legitimate union activities do not entail criminal charges and sanctions for trade unionists and that any such charges are immediately lifted. In particular, it urges the Government to ensure that Mr Jafar Azimzadeh, Mr Jamil Mohammadi and Mr Ali Nejati are not imprisoned for exercising their right to freedom of association and to keep it informed of developments in this regard. The Committee further requests the Government to provide detailed information on the outcome of the proceedings against Mr Razavi, Mr Madadi and Mr Ehsanirad and send copies of the judgments issued.*
- (d) *The Committee requests the Government to take all the measures necessary to ensure that no one is imprisoned merely for having organized or having peacefully participated in the truck drivers' strike in September 2018. It requests the Government to keep it informed of the outcome of the pending appeal proceedings in the case of 17 persons, and to send a copy of the judgments once they are issued. It further requests the Government to provide information in reply to the allegation of the arrest of over 200 strikers.*
- (e) *The Committee draws the Governing Body's attention to the extremely serious and urgent nature of this case.*

CASE NO. 3275

INTERIM REPORT

**Complaint against the Government of Madagascar
presented by
the International Transport Workers' Federation (ITF)**

***Allegations: The complainant alleges anti-union discrimination from a port sector company by:
(i) refusing to recognize the General Maritime Union of Madagascar (SYGMMA) as the legitimate representative of its workforce; and
(ii) penalizing and dismissing union leaders and members as measures of retaliation for carrying out legitimate trade union activities***

445. The complaint is contained in a communication from the International Transport Workers' Federation (ITF) dated 3 April 2017.
446. Since there has been no reply from the Government, the Committee has been obliged to postpone its examination of the case twice. At its March 2019 meeting [see 388th Report, para. 6], the Committee made an urgent appeal to the Government indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it could present a report on the substance of this case at its next meeting, even if the requested information or observations had not been received in time. To date, the Government has not sent any observations.
447. Madagascar has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It has not ratified the Workers' Representatives Convention, 1971 (No. 135).

The complainant's allegations

448. In a communication dated 3 April 2017, the ITF alleges that the State-owned Société de Manutention des Marchandises Conventionnelles (SMMC, hereinafter the company) has consistently denied the right of the General Maritime Union of Madagascar (SYGMMA) to organize workers at the Port of Toamasina and has implemented campaigns of retaliatory dismissals against workers carrying out legitimate trade union activities. It also indicates that the relevant agencies of the Government have failed to enforce legislation and court decisions protecting workers' and trade union rights.
449. The complainant indicates that the Toamasina Port Authority (SPAT) was established under Law No. 2003-025. It assigned the role of managing bulk and non-containerized cargo at the Port to the company in 2008. The company is also responsible for providing casual labour to Madagascar International Container Terminal Services Ltd (MICTSL), which was awarded a 20-year concession to manage the container terminal at the Port in 2005. The company employs 1,034 workers across the bulk and container terminals.
450. The ITF points out that on 1 March 2012, SYGMMA set up an enterprise-level union branch at the Port of Toamasina in accordance with sections 136–139 of the Labour Code to represent dock workers employed by the company, but that from the outset, the company

made it clear that it did not intend to recognize SYGMMA as the legitimate representative of its workforce.

451. The complainant alleges that on 13 March 2012, the company's management ordered three branch delegates to sign a letter stating that they would resign from the union and agree not to hold union meetings. The delegates refused and were subsequently dismissed and denied their performance and end-of-year bonus, in breach of sections 141, 144 and 145 of the Labour Code concerning protection against anti-union discrimination. Furthermore, on 9 May 2012, six other members of the union branch were initially denied work shifts and ultimately dismissed without cause.
452. The complainant points out that attempts at conciliation were initiated by, among others, the Labour Inspectorate, the District of Toamasina and the Region of Atsinanana, but that the company refused to participate on each occasion. In accordance with section 201 of the Labour Code, the labour inspector issued a failure to act report on 23 May 2012 after the company's failure to attend conciliation meetings on three consecutive occasions.
453. The complainant indicates that on 5 July 2012, SYGMMA sent a letter to the company requesting the reinstatement of the nine members and delegates within 72 hours. Following the company's failure to respond to the reinstatement request, branch members took lawful strike action on 11 and 12 July 2012. It alleges that on 13 July 2012, the company's management called 34 striking dock workers into a meeting and told them that if they wanted to return to work they would need to sign a letter stating that they would stop being members of the union. The dock workers refused to do so and were subsequently dismissed.
454. The ITF states that on 31 August 2012, SYGMMA filed a case with the Labour Court of Toamasina against the company's failure to recognize the union and requesting the reinstatement of the 43 dock workers dismissed for carrying out legitimate trade union activities. On 28 January 2013, the Ministry of Justice invited SYGMMA to the capital to meet the Director-General of Labour Affairs to address the industrial relations issues at the Port of Toamasina. This meeting took place in February 2013. On 25 February 2013, SYGMMA lodged a case with the Arbitration Board of the Court of First Instance concerning the failure of the company to recognize the union and on 26 July 2013, SYGMMA filed a case with the Court of First Instance concerning the unfair dismissals of the 43 dockers. On 26 July 2013, the Arbitration Board of the Court of First Instance delivered its judgment in favour of SYGMMA (the Arbitral Award). Among other things, the Court ruled that the company's failure to recognize the union amounted to an unconstitutional act in contravention of the principles of freedom of association. However the company failed to honour the Arbitral Award, despite the action of the Judicial Officer of the National Chamber of Enforcement Agents who confirmed the elements of the Arbitral Award on 17 July 2014 and the efforts of the Labour Inspectorate, as well as the attempts by SYGMMA to resolve the matter directly with the Government.
455. Lastly, the ITF indicates that on 10 April 2015 the Labour Court of First Instance dismissed the unfair dismissal claim. The union appealed the decision on 22 September 2015 but no court date has yet been set to hear the appeal. At the date of filing, SYGMMA has not been recognized by the company and none of the 43 dockers have been reinstated.
456. The ITF requests the Committee to formulate the necessary recommendations to urge the Government to act in conformity with Conventions Nos 87 and 98 with a view to restore the full exercise of those rights and to seek the immediate reinstatement of the 43 dismissed union delegates and members with full pay for back wages and adequate compensation.

The Committee's conclusions

457. *The Committee deeply regrets the fact that, despite the time that has elapsed since the presentation of the complaint, the Government has not provided the requested observations and information in time, even though it has been asked to do so several times, including through an urgent appeal made at its March 2019 meeting. Hence, in accordance with the applicable procedural rules [see 127th Report, para. 17, approved by the Governing Body at its 184th Session (1972)], the Committee is obliged to present a report on the substance of the case without being able to take account of the information which it had hoped to receive from the Government.*
458. *The Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to ensure respect for trade union rights in law and in practice. While this procedure protects governments against unreasonable accusations, they must recognize the importance of formulating, for objective examination, detailed replies concerning allegations brought against them [see First Report of the Committee, para. 31].*
459. *The Committee observes that this complaint concerns allegations of anti-union discrimination from a port sector company by: (i) refusing to recognize SYGMMA as the legitimate representative of its workforce; and (ii) by penalizing and dismissing union leaders and members as measures of retaliation for carrying out legitimate trade union activities.*
460. *The Committee notes the complainant's allegations according to which the company has consistently denied the right of SYGMMA to organize workers at the Port of Toamasina and has implemented campaigns of retaliatory dismissals against workers carrying out legitimate trade union activities. It also notes in this regard that on 26 July 2013, the Arbitration Board of the Court of First Instance delivered its judgment in favour of SYGMMA ruling that the company's failure to recognize the union amounted to an unconstitutional act in contravention of the principles of freedom of association but that the decision has not been enforced.*
461. *The Committee wishes to recall that the right of workers to establish and join organizations of their own choosing in full freedom cannot be said to exist unless such freedom is fully established and respected in law and in fact [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 472]. In view of the information at its disposal, the Committee requests the Government to take the necessary measures to ensure that: (i) the decision of the Arbitration Board of the Court of First Instance of 26 July 2013 is enforced; and (ii) trade union rights are respected at the Port of Toamasina allowing SYGMMA to carry out its trade union activities in full freedom.*
462. *With respect to the allegations of anti-union dismissals, the Committee notes from the complainant's allegations that: (i) in March 2012, three union branch delegates from SYGMMA were dismissed after they refused to sign a letter at the request of the company stating that they would resign from the union and agree not to hold union meetings; (ii) in May 2012, six other members of the branch were initially denied work shifts and ultimately dismissed without cause; and (iii) in July 2012, 34 dock workers who had participated in a lawful strike in favour of the nine members and delegates were dismissed as a consequence of their refusal to sign a letter stating that they would stop being members of the union.*
463. *In the absence of any information provided by the Government, the Committee considers that sanctions such as these, should they be proven, would seriously undermine the exercise of trade union rights. The Committee wishes to recall that no person should be dismissed or prejudiced in employment by reason of trade union membership or legitimate trade union*

activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment. In addition, when trade unionists or union leaders are dismissed for having exercised the right to strike, the Committee can only conclude that they have been punished for their trade union activities and have been discriminated against. The Committee also wishes to recall that coercing trade union members into leaving the trade union constitutes a serious violation of Conventions Nos 87 and 98 that consecrate the right of workers to freely join the organization of their own choice and the principle of the adequate protection of this right, and that management drafting of a union resignation letter constitutes a grave interference in the functioning of workers' organizations [see *Compilation*, op. cit., paras 1075, 958, 1199 and 1200].

- 464.** *In addition, the Committee wishes to draw the attention of the Government to the provisions of the Workers' Representatives Recommendation, 1971 (No. 143), in which it is expressly established that workers' representatives should enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as workers' representatives or on union membership, or participation in union activities in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements.*
- 465.** *With respect to the legal actions initiated by the complainant concerning the unfair dismissals claim of the 43 dockers, the Committee notes that on 10 April 2015 the Labour Court of First Instance dismissed the claim and that the union appealed the decision on 22 September 2015. The Committee observes that it has not been informed of any decision on the appeal since then. Recalling that respect for the principles of freedom of association clearly requires that workers who consider that they have been prejudiced because of their trade union activities should have access to means of redress which are expeditious, inexpensive and fully impartial [see *Compilation*, op. cit., para. 1142], the Committee requests the Government to indicate whether an appeal decision has been issued on the unfair dismissal claim. If it is found that acts of anti-union discrimination have been committed by the company, the Committee calls on the Government to take the necessary measures of redress, including ensuring that the workers concerned are reinstated without loss of pay. If reinstatement is not possible, the Government should ensure that the workers concerned are paid adequate compensation which would represent a sufficient dissuasive sanction for anti-trade union dismissals [see *Compilation*, op. cit., para. 1174].*

The Committee's recommendations

- 466.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee deeply regrets that the Government has not replied to the allegations, even though it has been asked to do so on several occasions, including through an urgent appeal, and requests it to reply as soon as possible.*
 - (b) The Committee requests the Government to take the necessary measures to ensure that: (i) the decision of the Arbitration Board of the Court of First Instance of 26 July 2013 is enforced; and (ii) trade union rights are respected at the Port of Toamasina allowing SYGMMA to carry out its trade union activities in full freedom.*
 - (c) The Committee requests the Government to indicate whether a judgment on appeal has been issued on the unfair dismissal claim of the 43 workers. If it is found that acts of anti-union discrimination have been committed by the*

company, the Committee calls on the Government to take the necessary measures of redress, including ensuring that the workers concerned are reinstated without loss of pay, and if reinstatement is not possible, the Government should ensure that the workers concerned are paid adequate compensation.

- (d) The Committee urges the Government to solicit information from the employers' organizations concerned, if they so desire, with a view to having at its disposal their views as well as those of the enterprise concerned on the pending issues.*

CASE NO. 3201

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

**Complaint against the Government of Mauritania
presented by
the General Confederation of Workers of Mauritania (CGTM)**

Allegations: The complainant organization denounces a Ministry of Labour circular suspending the election of staff representatives, thereby depriving the workers of legal representatives for concluding collective agreements and submitting individual and collective labour grievances

- 467.** The complaint is contained in communications from the General Confederation of Workers of Mauritania (CGTM) dated 24 March 2016, 8 March 2017 and 1 August 2018.
- 468.** The Government sent its observations in a communication dated 13 May 2016.
- 469.** Mauritania has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

- 470.** In its communication dated 24 March 2016, the CGTM denounced the provisions of Labour Directorate Circular No. 002 of 30 October 2014 suspending elections of staff representatives in Mauritania. The complainant indicated that this suspension is due to end after completion of the process instituted by Decree No. 156-2014/IJM of 21 October 2014, which introduces legal mechanisms for determining representativeness in the public and private sectors with a view to the holding of occupational elections.
- 471.** The complainant recalled that, under Mauritanian legislation, staff representatives in an enterprise have two main mandates: (i) to negotiate enterprise collective agreements (as established by section 99 of the Labour Code); and (ii) to submit individual and collective grievances emanating from the workers (section 122 of the Labour Code). These two mandates underline the key role played by staff representatives in labour relations

throughout the existence of the enterprise, in particular during periods of collective bargaining. Under the terms of the Labour Code, any enterprise which employs more than ten workers is obliged to arrange for the appointment of staff representatives without delay (section 118 of the Labour Code). Penalties are incurred for any non-compliance with regard to the appointment of staff representatives or the performance of their duties (section 434 of the Labour Code).

472. The CGTM also recalled that the term of office for staff representatives is two years (section 120 of the Labour Code) and that renewal of that term must occur during the month preceding the normal expiry of the representative's duties (section 412 of Order No. 6.595 of 4 September 1953 as amended by Order No. 7.852 of 9 October 1955 and by Order No. 10.282 of 2 June 1965 adopted to implement the first title of Book V of the Labour Code concerning staff representatives). Lastly, the regulations in force provide that the employer has the responsibility for organizing and conducting the ballot (section 12 of Order No. 6.595 as amended by Orders Nos 7.852 and 10.282).
473. However, according to the CGTM, the legal provisions concerning staff representatives are being increasingly violated inasmuch as a number of enterprises and undertakings are now refusing to renew the terms of office of staff representatives, encouraged to do so by the fact that the public authorities have suspended the renewal of staff representative bodies through Circular No. 002, whereby the Labour Director-General requested regional labour inspectors to defer any election of staff representatives. The CGTM appealed to the regional labour inspectorate of Nouakchott-Ouest (letter No. 063 of 16 December 2015) to protest against illegal and unacceptable interference. The regional labour inspectorate replied in writing (letter No. 389 of 28 December 2015) that it abides by the terms of the circular in question.
474. The CGTM considered that this is a violation of the laws and regulations in force in the country and of Conventions Nos 87 and 98 ratified by Mauritania. In conclusion, the complainant requested the Committee on Freedom of Association to take the necessary steps to ensure that Mauritania repeals the provisions of Circular No. 002 of 30 October 2014.
475. In a communication of 8 March 2017, the CGTM called for the examination of the complaint by the Committee to be suspended. The complainant indicated it had made this choice because of the willingness displayed by the Government to resolve the issue of the determination of trade union representativeness in the country. The Government thus acted on the recommendations of the ILO mission which visited the country in January 2017. On 6 March 2017, the Government signed a roadmap with all the trade unions, including the CGTM, advocating the organization of elections of staff representatives, between 1 July 2017 and 30 October 2017, both in private sector enterprises and ministerial departments, for the latter with a view to appointing the membership of joint administrative committees. The CGTM explained that it requested for the examination of its complaint to be suspended to maximize the chances of success of the process.
476. However, in its communication of 1 August 2018, the CGTM noted that the process established in the roadmap of 6 March 2017 has not been put into effect by the Government. In the CGTM's view, even though a number of regulatory texts have been adopted by the authorities, the fact remains that the process for the determination of trade union representativeness has been relegated to an amendment to the Labour Code, which, in view of the electoral deadlines set for 2019, could only be initiated in 2020 at the earliest. The CGTM also denounces the fact that this status quo appears to suit private sector enterprises, which continue to invoke Circular No. 002 of 30 October 2014 in order to refuse the organization of elections of staff representatives called for by the trade unions for the renewal of their terms of office. The situation thus deprives the workers of the possibility of submitting their individual and collective demands to the employers via the representatives that they should have under the law.

B. The Government's reply

477. In a communication dated 13 May 2016, the Government confirmed that the legislature has assigned important tasks to staff representatives within enterprises. These tasks are as follows: submission to the employer of all individual and collective grievances which have not been directly satisfied relating to conditions of work and the protection of workers; application of collective agreements and occupational classifications; submission to the labour inspectorate of all complaints or grievances concerning the application of laws and regulations which it has the responsibility to monitor; communication to the employer of all useful proposals for improving the organization and productivity of the enterprise; and communication to the employer of opinions and proposals on dismissals planned on economic grounds.
478. In view of the importance of this mandate assigned to staff representatives, the Government had to ensure that they remained above reproach through the rigorous application of the legal provisions for their election. Accordingly, the Labour Directorate considered it essential that enterprises implement the relevant legal provisions. Section 120 of the Labour Code concerning the election of staff representatives provides that “in the first round of the ballot, each list shall be established by the most representative organizations within the undertaking for each category of staff”. However, to date, the issue of representativeness has not yet been resolved in the country. Since any election held in violation of the provisions of section 120 of the Labour Code would be null and void, the Labour Directorate has initiated a process, with the support of the ILO and in consultation with several trade union organizations, including the complainant, for the purpose of determining the most representative organizations.
479. Accordingly, a regulatory text to give effect to the requirements of section 120 of the Labour Code was adopted, namely Decree No. 2014-156/PM concerning determination of the representativeness of trade union organizations, with regard to which extensive consultations were held before it was adopted. The Government therefore declared that it is involved in this process for determining the most representative trade unions in order to put an end to a situation which it considers to be having disastrous consequences for the legitimacy of the organizations currently negotiating on behalf of the workers.
480. The Government indicated that the CGTM, like many other trade union organizations, has always been informed of measures taken, and that it seemed to fully accept the approaches adopted. The Government wished to underline its commitment to strict observance of the labour legislation, of which it is, ultimately, the primary guarantor, as well as its wish to pursue consultations and dialogue with all the stakeholders concerned to arrive at the determination of representativeness with respect to the trade unions in the country.

C. The Committee's conclusions

481. *The Committee notes that, in the present case, the complainant organization denounces the suspension of elections of staff representatives in enterprises in the country as a result of a Labour Directorate circular issued in October 2014.*
482. *The Committee notes that, according to the allegations of the CGTM, staff representatives play a key role in labour relations in enterprises on account of the mandate conferred on them by the Labour Code. Their mandate includes negotiating and concluding enterprise collective agreements and submitting individual and collective grievances on behalf of the workers. Under the terms of the Labour Code, any enterprise which employs more than ten workers is obliged to arrange for the appointment of staff representatives without delay, and penalties are incurred for any infringements. Moreover, the regulations in force provide that the employer shall be responsible for organizing and conducting the ballot.*

483. *Recalling that the term of office for staff representatives is two years, the CGTM denounces the fact that more and more enterprises and undertakings are refusing at present to renew the terms of office of staff representatives, being encouraged to act thus by the public authorities, which have suspended the renewal of staff representative bodies through Labour Directorate Circular No. 002 of 30 October 2014, which calls on regional labour inspectorates to defer any election of staff representatives. Lastly, the CGTM indicates that the regional labour inspectorate of Nouakchott-Ouest was unwilling to accept its appeal of December 2015 denouncing interference by the public authorities.*
484. *The Committee notes that the Government in its reply recognizes the importance of the mandate assigned by the legislature to staff representatives within enterprises. Referring to the provisions of the Labour Code under which the lists of candidates for staff representative elections must be drawn up by the most representative occupational organizations in the undertaking for each category of staff (section 120 of the Labour Code), the Government notes that determination of the most representative trade union organizations has not been carried out so far in Mauritania and that any election of staff representatives would therefore be in violation of the laws and regulations in force. This situation explains the adoption of Labour Directorate Circular No. 2 of October 2014, which, in the absence of determination of the most representative trade union organizations, suspended the elections and thereby prevented any possible impropriety with regard to holding them.*
485. *At the same time, the Government recalls that it has been involved, since the adoption of Decree No. 2014-156/PM, with the trade union organizations concerned – including the CGTM – in a process for determining the most representative trade union organizations. This process, which is due to continue, is taking place with technical support from the ILO. The Committee notes the repeated commitment of the Government to pursue consultations and dialogue with all the stakeholders concerned to arrive at the determination of representativeness with respect to the trade unions in the country.*
486. *The Committee notes that, further to an ILO mission in January 2017 and its ensuing recommendations, the Government agreed in March 2017 with all the trade unions, including the CGTM, on a roadmap advocating the organization of elections for staff representatives, between 1 July 2017 and 30 October 2017, in private sector enterprises and ministerial departments with a view to appointing the membership of joint administrative committees. Since it wanted the initiated process to be successful, the CGTM called for the examination of the complaint to be suspended a few days after the roadmap was signed. However, in August 2018, the complainant noted that the process established by the roadmap had still not been set in motion. Despite the adoption of a number of regulatory texts by the authorities, the CGTM deplores the fact that the process for determining trade union representativeness has been relegated to an amendment to the Labour Code, which, in view of the electoral deadlines set for 2019, could only be initiated in 2020 at the earliest. The CGTM also objects that private sector enterprises continue to invoke Circular No. 002 of 30 October 2014 in order to refuse the organization of elections of staff representatives called for by the trade unions for the renewal of their terms of office. The complainant deplores the fact that this situation thus deprives the workers of the possibility of submitting their individual and collective demands to the employers via the representatives that they should have under the law. The Committee is bound to express its concern at the time that has elapsed without any real progress being made in the organization of elections of staff representatives. The Committee considers that this situation can only have a harmful and destabilizing effect in the long term on the climate of labour relations since it deprives the workers of the fundamental right of being represented to defend or promote their economic and social interests.*
487. *The Committee notes the position adopted by the Government in 2016 recalling its responsibility to ensure the observance of the laws and regulations in force and its wish to*

enable the holding of elections of staff representatives under impeccable conditions in which the determination of the most representative trade unions had already been accomplished. The Committee observes that Decree No. 2014-156/PM adopted to this effect relies on occupational elections in private sector enterprises and the public service with respect to the determination process. However, the Committee understands the concerns expressed by the complainant regarding the practical consequences of the absence of staff representatives in enterprises in the wake of Circular No. 002, which in effect takes the election process “back to square one”, eliminating or interrupting the main instrument of social dialogue and individual and collective dispute settlement established by the legislature. The Committee considers that, in view of the time that has elapsed since the adoption of Circular No. 002 in October 2014, a solution should be found as a matter of urgency to ensure without delay the legitimate representation of the workers in enterprises and the public service, and it expects that the Government will adopt as a matter of urgency all the regulatory texts provided for in Decree No. 2014-156/PM for establishing practical arrangements so that elections of staff representatives can be held without delay in private sector enterprises and the public service. The Committee urges the Government to keep it informed of all progress made in this regard.

- 488.** *While noting the objective predefined criteria for the determination of representative trade union organizations laid down in Decree No. 2014-156/PM (respect for the values established by the Constitution; independence; nationwide presence; membership dues), the Committee expects the Government to inform it without delay of tangible measures taken to ensure the full implementation of the roadmap signed in March 2017 with the trade unions. In this regard, the Committee trusts that the Government will continue to avail itself of the technical assistance of the Office, if it so wishes.*

The Committee’s recommendations

- 489.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a) The Committee expects that the Government will adopt as a matter of urgency all the regulatory texts provided for in Decree No. 2014-156/PM for establishing practical arrangements so that elections of staff representatives can be held without delay in private sector enterprises and the public service. The Committee urges the Government to keep it informed of all progress made in this regard.*
- (b) The Committee expects the Government to inform it without delay of the tangible measures taken to ensure the full implementation of the roadmap signed in March 2017 with the trade unions. In this regard, the Committee trusts that the Government will continue to avail itself of the technical assistance of the Office, if it so wishes.*

CASE NO. 3018

INTERIM REPORT

**Complaint against the of Government of Pakistan
presented by
the International Union of Food, Agricultural, Hotel, Restaurant,
Catering, Tobacco and Allied Workers' Associations (IUF)**

***Allegations: The complainant organization
alleges anti-union actions by the management of
a hotel in Karachi and the failure of the
Government to ensure freedom of association***

- 490.** The Committee last examined this case at its October 2018 meeting, when it presented an interim report to the Governing Body [see 387th Report, paras 532–559, approved by the Governing Body at its 334th Session].
- 491.** The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) provided additional information in a communication dated 17 December 2018.
- 492.** The Government provided observations in a communication dated 20 February and 7 May 2019.
- 493.** Pakistan has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

- 494.** At its October 2018 meeting, the Committee made the following recommendations [see 387th Report, para. 559]:
- (a) With regard to the situation of the trade union members who benefited from a reinstatement order from the Sindh Appellate Labour Tribunal in January 2013, the Committee requests the Government to indicate whether the Hotel¹ has accepted to negotiate with the remaining workers in line with the recommendations of the Tripartite Committee set up by the MOPHRD and if not, whether the management has maintained its appeal to the Sindh High Court. If the appeal has been maintained, the Committee must once again express its firm expectation that the Sindh High Court's decision on the management's appeal will be rendered without further delay and requests the Government to transmit a copy of the judgement once it has been issued. Should the reinstatement order be confirmed, the Committee expects that the Government will ensure the full execution of the ruling and secure the effective reinstatement of the workers in question, compensation for lost wages and any damages suffered. In the case of the union member who died while awaiting the enforcement of the judgment, the Committee once again requests the Government to indicate the steps taken in follow-up to its previous recommendations that his heirs receive adequate compensation. The Committee also expects the Government to keep it informed of the outcome of the five cases regarding claims for compensation before the Compensation Commissioner for which the Government indicated that two are pending for cross-action of the applicants and three are

¹ The Pearl Continental Hotel in Karachi.

at the stage of hearing on objections. Lastly, the Committee requests the Government to keep it duly informed of any amicable settlement reached between the Hotel and the workers as a follow-up to the recommendations of the Tripartite Committee set up by the MOPHRD on their reinstatement.

- (b) The Committee is bound to express once again its firm expectation that the Sindh High Court's decision concerning the workers who were allegedly denied access to the workplace after the events of March 2013 will be rendered without further delay and that all proceedings pending before the NIRC will be properly and expeditiously dealt with. The Committee firmly expects the Government to provide detailed information on meaningful development concerning these proceedings or any follow-up to the recommendations of the Tripartite Committee set up by the MOPHRD in this regard.
- (c) The Committee urges the Government to keep it informed of the outcome of the investigation into the serious allegations of anti-union harassment and violence submitted to the Federal Tripartite Consultative Committee, and of any follow-up measures thereof: (i) the harassment of union members; (ii) the acts of violence on 25 February and 13 March 2013 against several members of the Hotel trade union, its General Secretary, Mr Ghulam Mehboob and workers participating in a strike; and (iii) the subsequent brief arrest of union officers and members and filing of criminal charges against 47 of them.
- (d) The Committee urges the Government to keep it informed of the decision of the NIRC concerning the issue of a certificate for collective bargaining requested by the Hotel's national union and of any developments in the Hotel recognition of the union in accordance with the Tripartite Committee's recommendations.
- (e) While the Committee acknowledges the Government's efforts to encourage a peaceful resolution of outstanding matters between the Hotel management and the union, it must however express its concern about the lack of any resolution to long-standing matters in this case despite the time that has elapsed since the lodging of the complaint in 2013. The Committee expresses once again the firm expectation that the Government will take swift action and will be able to provide detailed information on the effective implementation of its recommendations in the very near future.

B. The complainant's additional information

495. In its communication dated 17 December 2018, the complainant refers to the Government's previous reply in which the Government indicated that it had set up a Tripartite Committee to conduct an independent inquiry into the issues raised by the complaint and that the Tripartite Committee recommended that the management of the Hotel should act in coordination with the General Secretary of the Pakistan Workers' Federation (PWF) and the President of the Employers' Federation of Pakistan (EFP) to settle the pending issues, including the situation of Mr Ghulam Mehboob, the General Secretary of the Hotel trade union. The complainant alleges that if the Government's reply is understood to mean that resolving the situation of the 37 workers or any members or leaders of the Hotel trade union is a matter to be negotiated between the General Secretary of the PWF and the employer representative, it would be a proposal that would deprive the concerned workers of the recognition and representation their trade union has been struggling for since 2001. This suggestion is deeply offensive to the workers and shows a lack of understanding of the meaning of freedom of association by the Government. It would also be inconsistent with the substance of the complaint and the jurisprudence of the ILO and both the complainant and its members in Pakistan would reject such a proposal. The complainant adds that the General Secretary of the PWF is a member of the Federal Tripartite Labour Consultative Committee but the PWF is not in any way a party to the dispute involving the Hotel trade union. The Tripartite Committee's role, should it become involved, is to promote good faith direct negotiations between the parties to the dispute so as to resolve the many outstanding issues. Any attempt on the part of the Government to arbitrarily impose representation by a federation of which the Hotel trade union is not a member and to eliminate the trade union's role in negotiating a resolution to the long-standing dispute would be viewed as a further violation of Conventions Nos 87 and 98.

C. The Government's reply

- 496.** In a communication dated 20 February 2019, the Government provides a reply to the additional information submitted by the complainant. It informs that the intentions of the Government in involving representatives of the PWF and the EFP is to promote good faith and direct negotiations between the parties to the dispute so as to resolve the many outstanding matters. The issues between the Hotel trade union and the management will be settled through negotiations and mutual consent of both parties.
- 497.** In its communication dated 7 May 2019, the Government informs about developments in this case. In particular, it indicates that the Hotel management has maintained its appeal before the Sindh High Court against the reinstatement order of 19 trade unionists issued by the Sindh Appellate Labour Tribunal in January 2013. It also states that the Ministry of Overseas Pakistanis and Human Resource Development (MOPHRD) has requested the National Industrial Relations Commission (NIRC) to obtain details on the case so that it could address the Attorney General and the Registrar of the Sindh High Court to request early disposal of the case through legal channels. Once rendered, the decision of the Court will be implemented effectively and a copy will be provided to the Committee. The Hotel management has also informed that the entire legal dues have already been paid to several employees, that Mr Ghulam Mehboob, General Secretary of the Hotel trade union, and other employees retired and that the management is ready to facilitate the payment of their pension and settle their claims. The Government assures that although the reinstatement order has been challenged before the Sindh High Court, the back benefits have been deposited in the Tribunal in the shape of bank guarantee, in compliance with the Appellate Labour Tribunal's order, and workers (except those who have attained the age of retirement) receive their monthly salary. Furthermore, a number of issues raised by the union, individuals, as well as cases before the NIRC and the courts, have been mutually resolved through arbitration.
- 498.** The Government further reiterates, with regard to the 65 workers who were allegedly denied access to the workplace in the aftermath of the industrial action in March 2013, that the MOPHRD has requested the NIRC to expedite all pending cases regarding the Hotel trade union and submit a report to the Ministry.
- 499.** As to the serious allegations of anti-union harassment and violence submitted to the Federal Tripartite Consultative Committee for necessary action, the Government states that during a meeting of the Tripartite Committee (constituted by the MOPHRD to conduct an independent inquiry into the allegations), the Hotel management informed of the following:
- (i) the management believes in unionism and considers that it is not possible to harass a huge number of workers;
 - (ii) the management has nothing to do with the 2013 incidents and no criminal case was filed against any worker;
 - (iii) some of the workers disrupted law and order, as a result of which the police arrested a number of persons for breach of peace, including some Hotel employees but these were later released;
 - (iv) the Hotel management has not taken any disciplinary action either for the strike or for disrupting law and order and not a single person was victimized on account of strike or any other allegations; and
 - (v) the workers involved in these incidents are being paid salaries and benefits regularly.

500. The Government further indicates, with regard to the issue of the certification request lodged by the Hotel's national union, that the management has challenged the decision of the NIRC on holding elections at national level to determine the collective bargaining agent before the Sindh High Court and the matter is pending adjudication. The MOPHRD has sought details on the case and will take further necessary actions accordingly.
501. Finally, the Government affirms that the Department of Labour in the Sindh Province has arranged tripartite meetings to resolve the pending issues and that the Government has also discussed the matter in the meeting of the Federal Tripartite Consultative Committee held in February 2019. It is expected that the issues between the Hotel and the union will be resolved through social dialogue.

D. The Committee's conclusions

502. *The Committee recalls that this case concerns serious allegations of anti-union actions including transfer and dismissal, harassment, arrest and criminal prosecution of trade union members and officials by the management of a hotel in Karachi in the Sindh Province, and ultimately the Government's failure to ensure that the Hotel's union and its members enjoy freedom of association.*
503. *The Committee notes the concerns expressed by the complainant with regard to the Government's previous reply as to the parties that should be involved in the negotiations for the resolution of the long-standing issues and observes, in particular, that, according to the complainant, an attempt to arbitrarily impose representation by a workers' federation of which the Hotel trade union is not a member and the exclusion of the Hotel trade union from the negotiations would amount to violations of Conventions Nos 87 and 98. In this regard, the Committee notes the Government's assertion that any issues between the Hotel management and the trade union will be settled through discussion and mutual consent of both parties and that the proposed involvement of the EFP and the PWF intends to promote good faith and negotiations among the parties. Recalling that workers and their organizations should have the right to elect their representatives in full freedom and the latter should have the right to put forward claims on their behalf [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 586], the Committee encourages the Government to take the necessary steps to ensure that the Hotel trade union will be able to actively engage in the negotiations with the management in order to find solutions to the long-standing matters in a way that will ensure that the workers concerned are represented by persons freely chosen and elected by them.*
504. *With regard to the situation of the trade union members who benefited from a reinstatement order from the Sindh Appellate Labour Tribunal in January 2013 (recommendation (a)), the Committee notes the Government's indication that the Hotel management maintained its appeal against this order before the Sindh High Court and that the Ministry plans to intervene with the Attorney General and the Registrar in order to request early disposal of the case. The Committee further observes from the information provided that, pending the decision of the Sindh High Court, legal dues were paid to some workers, the concerned trade unionists receive their monthly salary and a number of trade unionists, including the Secretary-General, retired in the meantime but the management is willing to facilitate the payment of their pension and settle their claims. While taking due note of the payment of some benefits to the concerned workers, as well as of the apparent openness of the management to settle their claims, the Committee must once again express deep concern at the time that has elapsed since the Sindh Labour Appellate Tribunal upheld the 2011 ruling of the Sindh Labour Court ordering reinstatement of 21 members of the Hotel's union, many of whom have since retired, and at the fact that the management's appeal against this order is still pending. Recalling that justice delayed is justice denied [see **Compilation**, op. cit., para. 170], the Committee firmly expects that the Sindh High*

Court's decision on the management's appeal will be rendered without further delay and requests the Government to transmit a copy of the judgment once it has been issued. Should the reinstatement order be confirmed, the Committee expects that the Government will ensure the full execution of the ruling and secure the effective reinstatement of the workers in question (or payment of pension for those who have reached the retirement age) and compensation for lost wages, as well as any damages suffered. Further regretting that the Government does not provide any information on the case of the union member who died while awaiting the enforcement of the reinstatement judgment, the Committee requests once again the Government to inform of the steps taken in follow-up to its previous recommendations that his heirs receive adequate compensation and to provide updated and concrete information in this regard. The Committee also expects the Government to keep it informed of the outcome of the five cases regarding claims for compensation before the Compensation Commissioner for which the Government had previously indicated that two are pending for cross-action of the applicants and three are at the stage of hearing on objections.

- 505.** *As to the proceedings before the Sindh High Court and the NIRC concerning the workers who were allegedly denied access to the workplace after the events of March 2013 (recommendation (b)), the Committee regrets that the Government is unable to report any progress in this regard and simply reiterates that it has requested the NIRC to expedite all pending cases regarding the Hotel trade union. The Committee observes that the Government had reported similar action in the past, without it resulting in any tangible developments. In these circumstances and in view of the lengthy proceedings, the Committee must once again express its firm expectation that the Sindh High Court's decision will be rendered without further delay and that all proceedings pending before the NIRC will be properly and expeditiously dealt with. It further expects the Government to provide detailed information on meaningful development concerning these proceedings or any follow-up to the recommendations of the Tripartite Committee set up by the MOPHRD in this regard.*
- 506.** *Concerning the serious allegations of anti-union harassment and violence submitted to the Federal Tripartite Consultative Committee for necessary action (recommendation (c)), the Committee notes the Government's indication that, during a meeting of the Tripartite Committee (constituted by the MOPHRD to conduct an independent inquiry into these allegations), the Hotel management stated that it did not take any disciplinary action, did not file criminal charges and did not victimize in any other way workers involved in the 2013 incidents, who continue to be paid salaries and other benefits but some Hotel employees who disrupted law and order, were indeed arrested by the police and later released. While duly noting this information, the Committee recalls that the Tripartite Committee was precisely tasked with examining these specific allegations and, therefore, requests the Government to clarify whether it has concluded its examination of the following allegations of anti-union harassment and violence: harassment of union members; the acts of violence on 25 February and 13 March 2013 against several members of the Hotel trade union, its General Secretary, Mr Ghulam Mehboob and workers participating in a strike; and the subsequent brief arrest of union officers and members and filing of criminal charges against 47 of them. The Committee requests the Government to provide concrete updated information on the outcome of the investigations and of any follow-up measures thereof and expects that the Government will be able to provide such information without further delay.*
- 507.** *With regard to the certification request lodged by the Hotel's national union (recommendation (d)), the Committee notes from the information provided by the Government that the Hotel management has challenged the decision of the NIRC on holding elections at the national level to determine the collective bargaining agent before the Sindh High Court. The Committee recalls from its previous examination of the case that the Tripartite Committee established by the MOPHRD to look into the issues raised by the complainant recommended that the Hotel management recognize and work in harmony with*

the national union. Emphasizing once again that one of the main objectives of workers in exercising their right to organize is to bargain collectively their terms and conditions of employment and that it is incumbent on the Government to ensure that there is no undue impediment in this regard, the Committee trusts that the decision of the Sindh High Court will be rendered without delay and urges the Government to keep it informed of any developments regarding the recognition of the union by the Hotel, in accordance with the Tripartite Committee's recommendations.

- 508.** *Finally, noting the Government's indication that tripartite meetings have been arranged by the Sindh Department of Labour to resolve the pending issues and that the case was also discussed at the meeting of the Federal Tripartite Consultative Committee and observing the Government's assertion that a number of issues have been mutually settled through arbitration and that others will be resolved through social dialogue, the Committee trusts that any remaining issues in this case will indeed be rapidly resolved through the appropriate mechanisms, including with the participation of the concerned union, and requests the Government to keep it duly informed of any amicable settlement reached between the Hotel and the workers as a follow-up to the recommendations of the Tripartite Committee set up by the MOPHRD on their reinstatement. It reminds the Government that ILO technical assistance is available to it should it so desire.*

The Committee's recommendations

- 509.** *In light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a) The Committee encourages the Government to take the necessary steps to ensure that the Hotel trade union will be able to actively engage in the negotiations with the management in order to find solutions to the long-standing matters in a way that will ensure that the workers concerned are represented by persons freely chosen and elected by them.*
- (b) With regard to the situation of the trade union members who benefited from a reinstatement order from the Sindh Appellate Labour Tribunal in January 2013, the Committee firmly expects that the Sindh High Court's decision on the management's appeal will be rendered without further delay and requests the Government to transmit a copy of the judgment once it has been issued. Should the reinstatement order be confirmed, the Committee expects that the Government will ensure the full execution of the ruling and secure the effective reinstatement of the workers in question (or payment of pension for those who have reached the retirement age) and compensation for lost wages, as well as any damages suffered. Further regretting that the Government does not provide any information on the case of the union member who died while awaiting the enforcement of the reinstatement judgment, the Committee requests once again the Government to inform of the steps taken in follow-up to its previous recommendations that his heirs receive adequate compensation and to provide updated and concrete information in this regard. The Committee also expects the Government to keep it informed of the outcome of the five cases regarding claims for compensation before the Compensation Commissioner for which the Government had previously indicated that two are pending for cross-action of the applicants and three are at the stage of hearing on objections.*

- (c) *In view of the lengthy proceedings concerning the workers who were allegedly denied access to the workplace after the events of March 2013, the Committee must once again express its firm expectation that the Sindh High Court's decision will be rendered without further delay and that all proceedings pending before the NIRC will be properly and expeditiously dealt with. It further expects the Government to provide detailed information on meaningful development concerning these proceedings or any follow-up to the recommendations of the Tripartite Committee set up by the MOPHRD in this regard.*
- (d) *The Committee requests the Government to clarify whether the Tripartite Committee established by the MOPHRD to conduct an independent inquiry into the allegations of anti-union harassment and violence has concluded its examination of the following allegations: harassment of union members; the acts of violence on 25 February and 13 March 2013 against several members of the Hotel trade union, its General Secretary, Mr Ghulam Mehboob and workers participating in a strike; and the subsequent brief arrest of union officers and members and filing of criminal charges against 47 of them. The Committee requests the Government to provide concrete updated information on the outcome of the investigations and of any follow-up measures thereof and expects that the Government will be able to provide such information without further delay.*
- (e) *The Committee trusts that the decision of the Sindh High Court on the management's appeal challenging the decision of the NIRC on holding elections at the national level to determine the collective bargaining agent will be rendered without delay and urges the Government to keep it informed of any developments regarding the recognition of the national union by the Hotel, in accordance with the Tripartite Committee's recommendations.*
- (f) *Observing the Government's assertion that a number of issues have been mutually settled through arbitration and that others will be resolved through social dialogue, the Committee trusts that any remaining issues in this case will indeed be rapidly resolved through the appropriate mechanisms, including with the participation of the concerned union, and requests the Government to keep it duly informed of any amicable settlement reached between the Hotel and the workers as a follow-up to the recommendations of the Tripartite Committee set up by the MOPHRD on their reinstatement. It reminds the Government that ILO technical assistance is available to it should it so desire.*

CASE NO. 3317

REPORT IN WHICH THE COMMITTEE REQUESTS
TO BE KEPT INFORMED OF DEVELOPMENTS

Complaint against the Government of Panama presented by

- **the National Confederation of United Independent Unions (CONUSI) and**
- **the National Confederation of Workers of Panama (CNETP)**

***Allegations: The complainant organizations
allege the violation of freedom of association
following the refusal to grant legal personality
to a series of trade union organizations, mainly
from the public sector***

510. The complaint is contained in communications from the National Confederation of United Independent Unions (CONUSI) dated 24 January and 21 May 2018 and communications from the National Confederation of Workers of Panama (CNETP) dated 10 May 2018 and 25 March 2019.

511. The Government sent its reply in communications dated 22 October 2018 and 21 May 2019.

512. Panama has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

513. In its communications dated 24 January and 21 May 2018, CONUSI reports that a series of trade unions, mainly from the public sector, were unjustifiably refused the granting of legal personality. CONUSI states, firstly, that in May 2016, the National Union of Garbage Collection Workers (SINTAURDO) sent the President of the Republic the decision of the Ministry of Labour and Workforce Development (MITRADEL) granting it legal personality, in order for the President to sign it, but up until the date of the submission of the complaint, he had not yet done so. CONUSI goes on to indicate that, in September 2016, the Union of Workers of the Social Insurance Fund (SINTRACSS) submitted corrected documentation for its request for registration, as ordered by MITRADEL; however, up until the date of the submission of the complaint the executive body had not yet issued a decision to grant it legal personality. The complainant organization also states that on 3 October 2017 the Union of Workers of the Ministry of Public Works (SINTRAMOP) presented a request for legal personality. On 14 November 2017 it presented the documents containing the corrections ordered in MITRADEL's decision of October 2017. On 18 April 2018, MITRADEL issued a decision not to accept the request to grant legal personality to the trade union organization, indicating that while it had submitted the statute reform document, it had not submitted the list of the trade union members who had attended the general assembly. On 27 April 2018, SINTRAMOP filed an application for reconsideration against the above-mentioned decision, alleging primarily that the refusal to grant legal personality had been issued six months and 15 days after the request for registration was made, while, on the one hand, article 68 of the Political Constitution stipulates a non-extendable period of 30 days within which to allow or reject the registration of a trade union, and, on the other, article 356 of the Labour Code indicates that if more time passes than is established for MITRADEL to object to the request for registration, the trade union organization shall consider itself to be registered for all legal

purposes and the Ministry will be obliged to issue the respective documents and certifications. The organization adds that the Labour Code does not demand as a requirement for registration the submission of an attendance list; consequently MITRADEL is not authorized to demand a requirement that is not established by law.

514. The complainant organization also adds that despite the non-extendable deadlines established in article 68 of the Political Constitution and article 356 of the Labour Code, the executive body did not issue any decision despite more than 30 days having passed since the submission of the request for registration of the following trade unions: the Trade Union of the Ministry of Economy and Finance (SITRAMEF), the Trade Union of the Ministry of Labour and Workforce Development (SITRAMITRADEL), the Trade Union of the Ministry of Health, and the Trade Union of the Instructors of the National Institute of Vocational Training and Human Development. The complainant organization also states that the same situation holds true for requests for legal personality made by private-sector trade unions and federations.
515. In a communication dated 10 May 2018, the CNTP associates itself with the complaint, alleging the failure to grant legal personality to a series of public sector trade unions. Further to those organizations already indicated by CONUSI, the CNTP also refers to the Trade Union of the Panama Maritime Authority and the Trade Union of the Office of the Comptroller-General of the Republic. CONUSI states that the failure to register the above-mentioned trade union organizations, following the granting of legal personality to a couple of state trade unions, would appear to demonstrate the Government's intention to start denying freedom of association in the public sector again, thus violating Convention No. 87, despite the constitutional status that the plenary session of the Supreme Court of Justice accorded this Convention in its ruling of 30 December 2015.
516. In a communication dated 25 March 2019, the CNTP submitted new allegations and additional information, alleging the violation of Convention No. 87 on the grounds of the failure to grant legal personality and the certification of a series of trade unions, from both the public and private sectors. In addition to the trade unions indicated in the three previous communications, the CNTP also refers to the following trade unions: the Trade Union of the Fire Service of the Republic of Panama (SINBORPA), the Industrial Trade Union of Dockworkers and Allied Workers of Panama (UNISITRAPOPAS), the Union of Environmental Workers (UTRAM), the Trade Union of Professionals, Salaried Employees and Similar Workers (SIPAS), the Trade Union of National Education Workers (SITEN), the Trade Union of Dance Artistes of Panama (SADANPA), and the Union of Christian Construction Industry and Allied Workers (UTRACICS). The CNTP states that a number of these trade unions submitted requests for legal personality over a year ago and that the corresponding decisions granting them that personality have not yet been issued; others have been informed that their requests are being processed; and further trade unions have had their requests for legal personality rejected, despite complying with all requirements. In other cases, MITRADEL has indicated to the trade unions that the decisions granting them legal personality have been with the Office of the President of the Republic since 2018 pending signature.

B. The Government's reply

517. In its communication of 22 October 2018, the Government sent its observations indicating that: (i) it respects the provisions of ratified ILO Conventions relating to freedom of association; (ii) with ILO support the country has a policy of tripartite dialogue aimed at promoting the effective implementation of Conventions Nos 87 and 98 through the committees set up in the framework of the Panama Tripartite Agreement; (iii) the current Government administration has to date granted legal personality to 42 trade union organizations; (iv) the right to organize of public sector workers has been recognized;

(v) SINTAURDO was granted legal personality by way of decision No. 9 of 2017 and SITRAMITRADEL by way of decision No. 6 of 2017; (vi) with respect to the requests for legal personality made by SINTRACSS, the Trade Union of Workers of the Ministry of Health (SITRAMINSA), SINTRAMOP and SITRAMEF, the Government indicates that these requests are pending before the Office of the President of the Republic at the admissibility stage; (vii) with respect to the alleged request for legal personality made by the Trade Union of the Instructors of the Institute of Vocational Training and Human Development, the Government states that there is no request for registration filed under that name in the archives of the Department of Social Organizations, however, another trade union organization exists under the name of the National Trade Union of Administrative, Technical and Teaching Workers of the National Institute of Vocational Training and Training for Human Development (SINTRAINADEH), the legal personality of which was recognized by way of decision No. 4 of 2018; and (viii) the Government, as well as issuing the decisions granting legal personality to the above-mentioned trade unions, also issues the respective certifications.

- 518.** By a communication dated 21 May 2019, the Government states that through the adoption of four resolutions on 9 May 2019, the following trade unions were granted legal personality: the Union of Workers of the Social Insurance Fund (SINTRACSS); (ii) the Union of Workers of the Ministry of Health (SITRAMINSA); (iii) the Union of the Fire Service of the Republic of Panama (SINBORPA); and (iv) the Union of Workers of the Ministry of Public Works (SINTRAMOP). The Government states that the foregoing confirms that the provisions of ILO Conventions ratified by Panama are respected, especially with regard to freedom of association, and expressly requests that the case be closed.

C. The Committee's conclusions

- 519.** *The Committee notes that the complainant organizations denounce the failure to grant legal personality and certification of registration to a series of trade unions, mostly from the public sector, that were in one of the following situations: (i) trade unions that had allegedly submitted, in some cases over a year previously, requests for legal personality, for which MITRADEL had not yet handed down a decision, irrespective of the provisions of the Constitution and the Labour Code, which stipulate a deadline of 30 days for the public authorities to hand down a decision on requests for legal personality; (ii) trade unions that had had their requests for legal personality rejected, despite complying with all requirements; and (iii) trade unions for which the decisions granting them legal personality were allegedly pending signature in the Office of the President of the Republic. The Committee notes that, according to the complainant organizations, the alleged facts demonstrate the Government's intention to start denying freedom of association in the public sector again.*
- 520.** *The Committee notes that, in its first communication of 22 October 2018, the Government states that: (i) it respects the provisions of ratified ILO Conventions relating to freedom of association and, with ILO support, it has a policy of tripartite dialogue aimed at promoting the effective implementation of Conventions Nos 87 and 98 through the committees set up in the framework of the Panama Tripartite Agreement; (ii) since taking up its functions it has granted legal personality to 42 trade union organizations; (iii) the right to organize of public sector workers has been recognized; (iv) it has already granted legal personality to a number of trade unions cited in the complaint; and (v) other requests for legal personality mentioned in the complaint are pending before the Office of the President of the Republic at the admissibility stage. The Committee also notes that, in its communication of 21 May 2019, the Government states that on 9 May 2019, four public sector trade union organizations were granted legal personality.*

521. *The Committee notes these various elements and observes that the trade union organizations mentioned in CONUSI's allegations and in the initial allegations from the CNTP are public sector trade unions. The Committee recalls that on a number of occasions in the past it has already examined allegations relating to Panama and the refusal by the administrative authority to grant legal personality to trade unions of public servants [see Case No. 2677, 354th (2009), 357th (2010), 360th (2011) and 367th (2013) Reports; Case No. 2751, 368th Report, 2013; and Case No. 3031, 371st (2014) and 378th (2016) Reports]. In line with the Government's statement and in reference to the previous paragraph, the Committee recalls that in the most recent case, after having asked the Government to amend the Public Administration Careers Act to ensure that the National Union of Education Workers (SINTE) may obtain legal personality and be registered as a trade union [see 371st Report, 2014, paras 627-639], it had: (i) noted with satisfaction that SINTE had obtained legal personality in April 2016; and (ii) noted with interest the preparation of a draft bill on collective relations in the public sector to address the observations of the ILO supervisory bodies in relation to the implementation of Conventions Nos 87 and 98. In the present case, the Committee takes due note that the Government: (i) states that it recognizes the right to organize of public sector workers; (ii) on 26 December 2017 granted legal personality to SINTAURDO and SITRAMITRADEL, two public sector workers' organizations; the certifications of legal personality of both organizations were issued on 25 October 2018; and (iii) on 9 May 2019 granted legal personality to the trade unions SINTRACSS, SITRAMINSA, SINBORPA and SINTRAMOP.*
522. *The Committee takes note with satisfaction the above-mentioned granting of legal personality to six public sector trade union organizations. The Committee welcomes the fact that these decisions confirm and strengthen the dynamic of the recognition of the public sector trade union organizations mentioned in the previous paragraph. At the same time, the Committee observes that the above-mentioned processes of granting legal personality and of certifying were drawn out over several months. In this respect, recalling that a one-year period for treating a union's application for registration is excessive and not conducive to harmonious industrial relations [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 467], the Committee requests the Government to take the necessary measures, particularly in the public sector, to ensure that in future the process for registering trade union organizations occurs expeditiously.*
523. *With respect to the remaining requests for legal personality made by public sector trade union organizations mentioned in the complaint, the Committee observes that, for some of them, the Government's reply does not provide any information (the Trade Union of the Panama Maritime Authority and the Trade Union of the Office of the Comptroller-General of the Republic), while for the SITRAMEF the Government states that the request is pending before the Office of the President of the Republic at the admissibility stage. The Committee recalls that although the registration procedure very often consists of a mere formality, there are a number of countries in which the law confers on the competent authorities more or less discretionary powers in deciding whether or not an organization meets all the conditions required for registration, thus creating a situation which is similar to that in which previous authorization is required. Similar situations can arise where a complicated and lengthy registration procedure exists, or where the competent administrative authorities may exercise their powers with great latitude; these factors are such as to create a serious obstacle for the establishment of a trade union and lead to a denial of the right to organize without previous authorization [see **Compilation**, op. cit., para. 450]. In the light of the foregoing and encouraged by the recent granting of legal personality to four public sector trade union organizations, the Committee trusts that the Government, in consultation with the organizations concerned and in full respect of the right of trade unions to establish themselves without previous authorization, will take the measures necessary for the recognition and certification of the legal personality of the organizations concerned to occur*

at the earliest possible opportunity. The Committee requests the Government to keep it informed in this respect.

- 524.** *Recalling once again the conclusions it adopted regarding Case No. 3031 concerning the necessary alignment of the Public Administration Careers Act with the principles of freedom of association and collective bargaining, the Committee also emphasizes that, as referred to by the Committee of Experts on the Application of Conventions and Recommendations in its observation published in 2019 on the implementation of Convention No. 87 by Panama, the Committee on the alignment of national legislation with ILO Conventions prepared, in a tripartite manner, the bill on collective labour relations in the public sector. The Committee observes that this bill establishes, among other measures, that all public servants may establish trade union organizations, without the need for previous authorization. Noting that the bill was submitted in the second half of 2018 for debate before the National Assembly, the Committee trusts that legislation to regulate the establishment, registration and functioning of public sector trade unions in accordance with the principles of freedom of association and collective bargaining will be adopted at the earliest opportunity. The Committee refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations.*
- 525.** *With respect to the alleged lack of response from the executive body to the request for legal personality made by the Trade Union of the Instructors of the National Institute of Vocational Training and Human Development, the Committee notes the Government's statement that there is no request for registration filed under that name in the archives of the Department of Social Organizations, although it does report that another trade union organization exists under the name of the National Trade Union of Administrative, Technical and Teaching Workers of the National Institute of Vocational Training and Training for Human Development (SINTRAINADEH), the legal personality of which was recognized by way of decision No. 4 of 7 February 2018. Observing that the name of the trade union organization to which the Government refers differs from the name mentioned by the complainant organizations in their complaint, the Committee invites the complainant organization to indicate whether the trade union to which legal personality has been granted is the same as the one to which it refers in its allegations and, if it is not, to provide the Government with more details on the request for legal personality referred to in the complaint.*
- 526.** *Observing, finally, that in a communication dated 25 March 2019, the CNTP submitted, in addition to the complaint regarding the non-registration of the SINBORPA, with respect to which the Government has informed of the granting of its legal personality, allegations relating to the failure to register another six trade union organizations, from both the public and the private sectors, the Committee requests the Government to promptly send its comments in this respect.*

The Committee's recommendations

- 527.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a)** *Encouraged by the recent granting of legal personality to four public sector trade union organizations, the Committee trusts that the Government, in consultation with the organizations concerned and in full respect of the right of trade unions to establish themselves without previous authorization, will take the measures necessary for the recognition and certification of the legal personality of the following organizations to occur at the earliest possible opportunity: the Trade Union of the Panama Maritime Authority, the Trade*

Union of the Office of the Comptroller-General of the Republic, and the Trade Union of the Ministry of Economy and Finance (SITRAMEF). The Committee requests the Government to keep it informed in this respect.

- (b) The Committee trusts that legislation to regulate the establishment, registration and functioning of public sector trade unions will be adopted at the earliest opportunity in accordance with the principles of freedom of association and collective bargaining. The Committee refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations.*
- (c) With respect to the request for legal personality made by the Trade Union of the Instructors of the National Institute of Vocational Training and Human Development, observing that the name of the trade union organization to which the Government refers differs from the name mentioned by the complainant organizations in their complaint, the Committee invites the complainant organization to indicate whether the trade union to which legal personality has been granted is the same as the one to which it refers in its complaint and, if it is not, to provide the Government with more details on the request for legal personality referred to in the complaint.*
- (d) The Committee requests the Government to promptly send its comments regarding the allegations relating to the failure to register six trade union organizations contained in the communication from the National Confederation of Workers of Panama (CNTP) dated 25 March 2019.*

CASE NO. 3195

DEFINITIVE REPORT

**Complaint against the Government of Peru
presented by
the United National Union of Workers of the National Tax Administration
Supervisory Authority – Internal Taxation (SINAUT SUNAT)**

Allegations: The complainant alleges acts of anti-union discrimination by the National Tax Administration Supervisory Authority (SUNAT)

- 528.** The complaint is contained in a communication dated 16 January 2016 from the United National Union of Workers of the National Tax Administration Supervisory Authority – Internal Taxation (SINAUT SUNAT).
- 529.** The Government sent its observations in two communications dated 26 July 2016 and 3 May 2019.
- 530.** Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

- 531.** In its communication dated 16 January 2016, the complainant organization alleges acts of anti-union discrimination (proceedings to impose sanctions and the imposition of penalties) by the National Tax Administration Supervisory Authority (SUNAT) against two trade union officials, María del Carmen Covarrubias Hermoza and Paola Luisa Aliaga Huatuco. The complainant organization states that at that time Ms Covarrubias was serving as general secretary of SINAUT SUNAT and as titular representative of the Autonomous Confederation of Peruvian Workers (CATP) before the National Occupational Safety and Health Council, the Technical Social Security Committee of the National Council for Labour and Employment Promotion (CNTPE) and the Special Anti-crisis Committee, while Ms Aliaga was serving as defence secretary of SINAUT SUNAT and titular representative of the CATP before the Technical Labour Committee of the CNTPE and the Special Committee on Productivity and Minimum Wages.
- 532.** The complainant organization states that the public institution had initiated disciplinary action against both trade union officials following several statements made using various forms of media. In this respect, the complainant organization explains that on 26 June 2015, the weekly publication *Hildebrandt en sus trece* published an article entitled “Doble de cuerpo” (“Body double”) in which both trade union officials questioned the management of the public institution in question, and in particular the alleged uneven increase in remuneration enjoyed by the executives of the public institution, to the detriment of the other workers, and the alleged recruitment of officials in the confidence of senior management by direct appointment, to the detriment of the principle of career development and merit that should govern public employment. Furthermore, the complainant organization indicates that on 14, 17 and 20 July 2015, the trade union officials, using various forms of media, reported that a number of irregularities had been seen in training provided to workers through a private university, and other matters related to worker overcrowding, the inappropriate use of workers’ funds, and lack of compliance with occupational safety and health standards.
- 533.** The complainant organization alleges that, following these statements, the public institution initiated administrative proceedings against the officials in question for failure to comply with their obligations as workers, as stipulated in article 38(m) and (x) of the internal workplace rules of the public institution, which constituted serious administrative misconduct as stipulated in article 47(a) and (g) of said rules. According to the memorandums issued by that body, the officials had failed in their obligation to “refrain from any actions that might undermine the image of SUNAT”, “refrain from insulting or making slanderous claims against the employer or managerial staff” and accuse them of having made statements that “not only did not correspond to reality but that in addition continued to affect the image of the institution, calling into question the integrity of the institution and the quality of its technical experts”. On 10 and 16 September 2015, the public institution notified both trade union officials of their respective penalties, sentencing Ms Covarrubias and Ms Aliaga Huatuco to a three-day and to a one-day suspension from duty without pay, respectively. Both trade union penalties were appealed before the Civil Service Tribunal on 10 October 2015 (highest administrative court that hears disputes between the State and public officials).
- 534.** The complainant organization states that, prior to the imposition of the penalties in question, it had requested the National Directorate for Labour Taxation (SUNAFIL) to initiate an inspection procedure to verify whether anti-union practices had been committed against the officials in question. According to the same, after carrying out the inspection activities, on 30 October 2015 SUNAFIL issued infringement report No. 2077-2015, finding that the public institution in question had engaged in acts of discrimination against the trade union and the trade union officials.

535. Regarding the above-mentioned matters, the complainant organization considers that: (i) the initiation of disciplinary proceedings against the two officials as a result of statements made to the media constitutes an act of anti-union discrimination; (ii) both trade union officials were not only performing their duties as trade union officials of their organization, but were also representing the CATP in tripartite social dialogue bodies and on various technical committees; (iii) the public statements made by the trade union officials referred to matters of public knowledge and, consequently, it considers that the views expressed by the trade union officials in question related wholly to matters directly associated with their work in defence of labour rights, such as the unfair distribution of wages and the undermining of workers' careers within the public institution; (iv) the public statements were made in the context of the legitimate exercise of their trade union duties, as the right to freedom of association also implies freedom of expression; (v) SUNAFIL determined in its infringement report that "the disciplinary proceedings and the penalties imposed on the appellants and trade union representatives of SINAUT SUNAT constitute acts of trade union discrimination, acts prohibited by constitutional, international and legal instruments, and which affect freedom of association and the freedom of expression of the representatives of the organization in question". Moreover, the report notes that "the working environment in which the events occurred" must be taken into account, "as the views expressed by the appellants constitute part of the statement of claims and objections made by the trade union organization that they represent"; and (vi) the public institution has been the subject of several complaints presented to the Committee and, despite its conclusions, the Government has not implemented any of its recommendations.

B. The Government's reply

536. In its communications dated 26 July 2016 and 3 May 2019, the Government sent observations from SUNAT regarding the administrative disciplinary proceedings and the imposing of penalties on the above-mentioned trade union officials. In this respect, the public institution concerned states that: (i) article 9 of the single consolidated text of Legislative Decree No. 728, Labour Productivity and Competitiveness Act, approved by Supreme Decree No. 003-97-TR, regulates the scope of subordination, granting the employer the right to give the orders necessary for work to be performed and to take disciplinary measures, within reasonable limits, in respect of any infringement or failure to comply with obligations, irrespective of the status of trade union official; (ii) the statements made by both trade union officials resulted in the initiation of disciplinary proceedings, within the terms of reference of the rules governing the disciplinary procedure of the public institution, during which the officials concerned exercised their right of defence; (iii) after evaluating the evidence, the counter evidence and further documents constituting the case, the public institution decided to impose penalties on the officials concerned; (iv) these proceedings do not constitute acts of anti-union discrimination, as the status of trade union official does not release the person concerned from fulfilling the obligations arising from the employment relationship; (v) freedom of expression does not extend to insults and freedom of information does not provide protection in the event of spreading inaccurate information; (vi) the statements made by the officials in question had allegedly seriously tarnished the image of the institution by spreading false, incorrect and imprecise information; (vii) the trade union officials, exercising their right to appeal, both proceeded to lodge an appeal against the administrative decision before the Second Chamber of the Civil Service Tribunal, which declared both appeals to be unfounded on 20 January 2016, having confirmed that the statements made by the objecting officials had not been duly proven and lacked substance; and (viii) with respect to infringement report No. 2077-2015 issued by SUNAFIL, SUNAT had allegedly submitted its counter arguments and to date the supervisory body concerned had allegedly not handed down a definitive ruling; consequently it cannot be claimed that SUNAT committed acts of anti-union discrimination.

C. The Committee's conclusions

537. *The Committee observes that this case refers to the imposition of disciplinary penalties by the National Tax Administration Supervisory Authority (SUNAT) on two trade union officials from SINAUT SUNAT and the CATP following statements made using various forms of media denouncing alleged irregularities in the management of that public institution.*
538. *The Committee notes that, according to the allegations of the complainant organization: (i) following the statements, SUNAT initiated administrative proceedings against the officials in question as, in its view, their statements had allegedly tarnished the image of the institution, and were incorrect and insulting; (ii) the public institution issued penalties against Ms Covarrubias and Ms Aliaga for alleged serious administrative misconduct and sentenced them to a three-day and to a one-day suspension from duty without pay, respectively; (iii) prior to the imposition of penalties, the complainant trade union requested the National Directorate for Labour Taxation (SUNAFIL) to initiate a procedure to verify whether anti-union practices had been committed; (iv) on 30 October 2015 SUNAFIL issued an infringement report, finding that the public institution in question had engaged in acts of discrimination against the trade unions and the trade union officials; and (v) both disciplinary penalties were appealed before the Civil Service Tribunal on 10 October 2015.*
539. *The Committee also notes that the complainant organization states, in respect of the penalties imposed on the trade union officials, that: (i) the public statements made by the officials referred to matters of public knowledge and that the views expressed to the media related wholly to matters directly associated with their work in defence of labour rights; (ii) the exercise of freedom of association also implies the right to freedom of expression; and (iii) the present violation arose in a context of systematic violations of trade union rights by the above-mentioned institution and the Government's refusal to implement the recommendations made by the Committee on Freedom of Association.*
540. *The Committee notes that the Government submitted the reply from the public institution, which states, with respect to the allegation by the complainant organization, that: (i) article 9 of the single consolidated text of Legislative Decree No. 728, Labour Productivity and Competitiveness Act grants the employer the right to give the orders necessary for work to be performed and to take disciplinary measures, within reasonable limits, in respect of any infringement or failure to comply with obligations, irrespective of the status of trade union official; (ii) freedom of expression does not extend to insults and freedom of information does not provide protection in the event of spreading inaccurate information; (iii) the statements made by the officials in question had allegedly seriously tarnished the image of the institution by spreading false, incorrect and imprecise information; (iv) the appeals lodged by the officials were declared unfounded by the Second Chamber of the Civil Service Tribunal; and (v) to date SUNAFIL has allegedly not handed down a definitive ruling with respect to the alleged anti-union acts, and consequently it cannot be claimed that the public institution committed acts of anti-union discrimination.*
541. *The Committee observes that according to infringement report No. 2077-2015, following the procedures followed at said institution, SUNAFIL concludes that "although the statements (by the officials in question) could be qualified as lacking in respect, they are not sufficiently serious as to justify a penalty of the severity of the suspensions from duty without pay imposed on the appellants, and neither can they be considered to be injurious in the true sense of the word, as they lack animus injuriandi" and it considers that "the disciplinary procedure and the penalty imposed on the appellants and trade union representatives of the SINAUT SUNAT trade union constitute anti-union discriminatory acts". It further notes the public institution's indication that it had submitted its counter arguments and that SUNAFIL had not yet handed down its definitive ruling. With respect to the freedom of expression of trade union organizations and its scope, the Committee recalls that the resolution of 1970*

concerning trade union rights and their relation to civil liberties places special emphasis on freedom of opinion and expression, which are essential for the normal exercise of trade union rights [see *Compilation of decisions of the Committee on Freedom of Association*, sixth edition, 2018, para. 257]. The Committee also recalls that it has considered that the full exercise of trade union rights calls for a free flow of information, opinions and ideas, and to this end workers, employers and their organizations should enjoy freedom of opinion and expression at their meetings, in their publications and in the course of other trade union activities. Nevertheless, in expressing their opinions, these organizations should respect the limits of propriety and refrain from the use of insulting language [see *Compilation*, op. cit., para. 236].

542. Noting, firstly, that the administrative decision handed down by the Civil Service Tribunal found the penalties imposed on the two officials to be valid, while SUNAFIL's infringement report found that the penalties constituted anti-union discrimination, and observing, secondly, that since 2016 it has not received any information on SUNAFIL's definitive ruling or on the possible judicial challenge to the administrative decision handed down by the Civil Service Tribunal, the Committee trusts that the proceedings relating to the disciplinary penalties imposed will have been completed without delay and in accordance with the Committee's above-mentioned decisions.

The Committee's recommendation

543. *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation.*

The Committee trusts that the proceedings relating to the disciplinary penalties imposed on the trade union officials will have been completed without delay and in accordance with the Committee's decisions mentioned in the conclusions of the present case.

Geneva, 14 June 2019

(Signed) Professor Evance Kalula
Chairperson

Points for decision:

paragraph 126	paragraph 387
paragraph 149	paragraph 411
paragraph 158	paragraph 422
paragraph 186	paragraph 444
paragraph 215	paragraph 466
paragraph 261	paragraph 489
paragraph 296	paragraph 509
paragraph 318	paragraph 527
paragraph 346	paragraph 543
paragraph 364	